

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

OCTOBER 30-31, 2010

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**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

8:30 a.m.

Friday, October 30, 2009

David Cohen Hall

Beatrice Friedman Symphony Center

Sarasota, FL

COMMITTEE MEMBERS PRESENT:

Mr. Dan Monroe, Acting Chair

Ms. Sonya Atalay

Ms. Donna Augustine

Mr. Eric Hemenway

Mr. Mervin Wright, Jr.

Ms. Rosita Worl

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WELCOME

DAN MONROE: Good morning, all. Welcome.
Thank you for joining us. I'm Dan Monroe. I'm
Acting Chairman of the NAGPRA Review Committee.
Before we begin this morning, I'd like to welcome
our newest Review Committee member. Mervin, it's a
delight to have you on board.

MERVIN WRIGHT, JR.: Thank you.

DAN MONROE: And Donna Augustine, if you would,
could you please deliver an invocation for us this
morning?

INVOCATION

DONNA AUGUSTINE: I'm going to light a little
bit of this sweet grass right from here. It is our
custom that we light the smudge to put that
protective circle around all of us, and it makes it
inviting for the spirits to come in. I hope the
alarms don't go off. We'll have a community
shower.

(Native American prayer.)

DAN MONROE: Thank you.

David.

WELCOME AND ROLL CALL

DAVID TARLER: Good morning, Mr. Chairman. I
will take the roll call. Please answer if you're

1 present.

2 Donna Augustine?

3 DONNA AUGUSTINE: Here.

4 DAVID TARLER: Eric Hemenway?

5 ERIC HEMENWAY: Here.

6 DAVID TARLER: Rosita Worl?

7 ROSITA WORL: Here.

8 DAVID TARLER: Dan Monroe?

9 DAN MONROE: Here.

10 DAVID TARLER: Mervin Wright, Jr.?

11 MERVIN WRIGHT, JR.: Here.

12 DAVID TARLER: Sonya Atalay?

13 SONYA ATALAY: Here.

14 DAVID TARLER: Alan Goodman is absent due to
15 illness, and we wish him a full and speedy
16 recovery.

17 Mr. Chairman, I too would like to welcome two
18 members to the Review Committee. I would like to
19 welcome Chairman Mervin Wright, Jr., of the Pyramid
20 Lake Paiute Tribe, who was appointed to the Review
21 Committee on July the 23rd by Interior Secretary
22 Salazar. Mr. Wright is the Chairman of the Pyramid
23 Lake Paiute Tribe. He was nominated by his tribe,
24 as well as by the Comanche Nation in Oklahoma and
25 the Pawnee Nation of Oklahoma. Welcome.

1 Mr. Wright succeeds Rosita Worl on the
2 committee, and as you can see Rosita Worl is on the
3 committee. Rosita Worl was – is the at-large or
4 consensus member of the Review Committee. The
5 consensus or at-large member is appointed by the
6 Secretary from a consented-to list of persons
7 developed by the – a subcommittee of the Review
8 Committee, which includes all the Review Committee
9 members except for the at-large member. Dr. Rosita
10 Worl is President of Sealaska Heritage Institute,
11 Vice-Chair of the Board of Sealaska Corporation,
12 and a board member of the Alaska Federation of
13 Natives, and she also teaches at the University of
14 Alaska Southeast. She has served on the Review
15 Committee since 2000, including as Chairman.

16 Welcome back, Rosita Worl.

17 Mr. Chair.

18 DAN MONROE: Thank you.

19 **ELECTION OF REVIEW COMMITTEE CHAIR**

20 DAN MONROE: We will now carry out an election
21 for the Chair of the Review Committee. I've had
22 the privilege to serve in an acting capacity since
23 August. I wish to remove my name from
24 consideration, but I would like nominations for the
25 Chair of the Review Committee from other members.

1 Yes, Donna.

2 DONNA AUGUSTINE: I'd like to nominate Mervin
3 Wright.

4 DAN MONROE: Mervin has been nominated. Other
5 nominations?

6 ERIC HEMENWAY: I'd like to nominate Rosita
7 Worl.

8 DAN MONROE: Thank you.

9 Others? Very good. We will I think just have
10 a straight-up hand vote for the Chairman position.

11 All those in favor of Mervin raise their hands
12 please.

13 (Voting in favor were Ms. Augustine and
14 Ms. Atalay.)

15 DAN MONROE: All in favor of Rosita Worl. I
16 can't see.

17 (Voting in favor were Mr. Hemenway and
18 Mr. Monroe.)

19 DAN MONROE: What do we have, a tie?

20 DAVID TARLER: Correct.

21 DAN MONROE: Okay. Do we have any precedent
22 process in the event of a tie?

23 STEPHEN SIMPSON: No, Mr. Chairman, you do not.

24 DAN MONROE: Great. This was supposed to be
25 easy. Any recommendations from our Review

1 Committee members? We're missing, of course, one
2 member.

3 ROSITA WORL: Mr. Chair.

4 DAN MONROE: Yes.

5 ROSITA WORL: You could continue to act as
6 Chair until we have our next member again.

7 DAN MONROE: I think that we clearly need to
8 have all of our members present. That will, one
9 way or the other, break a tie vote. In that case,
10 unless any of you have alternate suggestions, I
11 will continue until such time as we can involve
12 Mr. Goodman.

13 DAVID TARLER: Thank you, Mr. Chairman.

14 DAN MONROE: Thank you.

15 REQUEST BY THE SAN CARLOS APACHE TRIBE AND THE
16 WHITE MOUNTAIN APACHE TRIBE, THROUGH THE WESTERN
17 APACHE NAGPRA WORKING GROUP, THAT THE REVIEW
18 COMMITTEE, PURSUANT TO 25 USC 3006 (C) (3), MAKE
19 FINDINGS OF FACT RELATED TO THE IDENTITY OF 45
20 ITEMS WHICH THE AMERICAN MUSEUM OF NATURAL HISTORY
21 HAS STATED IN NOTICES OF INTENT TO REPATRIATE ARE
22 "CULTURAL ITEMS"

23 DAN MONROE: We have a request by the San
24 Carlos Apache Tribe and the White Mountain Apache
25 Tribe through the Western Apache NAGPRA Working

1 Group that the Review Committee pursuant to 25 USC
2 3006 (c) (3) make findings of fact related to the
3 identity of 45 items which the American Museum of
4 Natural History has stated in Notices of Intent to
5 Repatriate are cultural items. And I believe we
6 have a number of folks here who wish to testify.

7 DAVID TARLER: That's correct, Mr. Chairman,
8 and I'd like to call them to the table, and as they
9 are coming up I would also like to call on our
10 counsel Carla Mattix to talk to the Review
11 Committee and to the public about matters that come
12 before the Review Committee under Section 8(c) (3)
13 of NAGPRA.

14 DAN MONROE: Could we have you do that please
15 first, Carla?

16 **CLARIFICATION OF ISSUE**

17 CARLA MATTIX: As some of you might recall in
18 Section 8 the responsibilities of the Review
19 Committee are set out and often we usually hear
20 about disputes, but in addition to disputes, which
21 is in Section 8(c) (4), there's a section just prior
22 to that, 8(c) (3), that says upon the request of any
23 affected party, the Review Committee can review and
24 making findings related to (A) the identity or
25 cultural affiliation of cultural items, or (B) the

1 return of such items. And this actually came up –
2 Rosita, I think you were probably on the committee
3 when it came up earlier in the early part of the
4 2000s, the distinction between these two
5 provisions, between the dispute provision and this
6 review and findings provision. And the committee
7 actually at that time, to make it clear that both
8 types of proceedings could come before the
9 committee, divided out these two functions.

10 And you do have Review and Finding Procedures
11 that were established in May of 2003, and they are
12 on your handy disk here, that are similar to the
13 Dispute Procedures and it explains to the public
14 how they can make a request for the committee to
15 make one of these review and findings, if they have
16 some issues that fall within this category. So
17 this is something that has been done in the past.
18 It hasn't been used fairly recently, I think, for
19 most of you, but it is an alternate to the dispute
20 function of the Review Committee.

21 DAN MONROE: Questions?

22 There's no requirement – is that right, Carla
23 – that we make findings?

24 CARLA MATTIX: There's no requirement. It's
25 again an informal procedure for parties to come

1 forward and ask for your assistance, but there's no
2 requirement to make a finding.

3 DAN MONROE: Very good. Thank you.

4 Yes.

5 MERVIN WRIGHT, JR.: Reading the materials,
6 it's clear that the museum considered it cultural
7 items but however, you know, looking at the
8 correspondence from the Apache representation, they
9 are considering them sacred or items of cultural
10 patrimony. Are museums, you know, at some point in
11 time required to utilize the - I guess the original
12 accession records, you know, to have some
13 information that makes that determination
14 separating with the distinction of what these items
15 are?

16 CARLA MATTIX: Let me just - I'll make one
17 comment, and then I'll let you talk about the
18 notice procedures. Under NAGPRA a museum or
19 Federal agency does have to make a determination
20 about the category - the object category, whether
21 it - in this case, whether it's an unassociated
22 funerary object, an object of cultural patrimony,
23 or a sacred object under this part of the law.

24 For their own records, and in the case of a
25 Federal agency we have what's called the

1 administrative record. Whenever an agency makes a
2 decision they have to record how they did that to
3 make sure it's not arbitrary and capricious, that
4 whole standard. That's for Federal agencies.
5 Museums, as well, I think to defend their actions
6 should also have a record that they keep of making
7 this determination, but that is - it's their
8 determination. And then the separate part that
9 we're talking - that might come into play is
10 actually dealing with the notice section. There's
11 a requirement in the statute and in the regulations
12 for notice, and I'll let Stephen talk a little bit
13 more about the notice requirements.

14 STEPHEN SIMPSON: Yes, the notice that's
15 required - there is a notice requirement in the
16 statute for funerary objects and human remains, the
17 Notice of Inventory Completion we're all fairly
18 familiar with. The statute does not actually
19 require a notice as far as a summary goes for
20 sacred objects, for objects of cultural patrimony.
21 But in writing the regulations, the National NAGPRA
22 Program made the choice to make sure that notice
23 was given to tribes and to Native Hawaiian
24 organizations that these summaries had been filed,
25 an idea of what they were - what the objects were,

1 and sort of a broad-brush description to serve the
2 same purpose as a Notice of Inventory Completion,
3 so that the tribes and the NHOs were on notice that
4 there were these items there and that – these sorts
5 of items there and that they needed to step up if
6 they wanted the repatriation.

7 But in creating that notice requirement we had
8 to consider basic concepts of due process and
9 especially the balancing between how specific a
10 notice needed to be for the tribes and the Native
11 Hawaiian organizations to get – to have a
12 sufficient idea as to what was there against the
13 requirement of how much information we could
14 require the museum or the Federal agency to give.
15 And the way that – and in the preamble to the final
16 rule, when we did this in the regulations, we noted
17 that the Review Committee at the time recommended
18 reducing the specificity of that requirement from
19 an object-by-object listing, which is what is in an
20 inventory notice of completion, to more of a
21 description of the cultural items in sufficient
22 detail so that they can – the tribes or the NHOs
23 can decide whether they're interested. So there
24 was a conscious decision based on a recommendation
25 from the committee that this could lowered, the

1 level of detail could be lowered for these items.

2 So the regulations as written require that -
3 only that the museum lists the items as cultural
4 items under NAGPRA. They do not require that the
5 museums say in the notice whether the item is a
6 sacred item or an object of cultural patrimony, and
7 that is in fact what the museum did in this case.
8 They did list in the notice that these were
9 cultural items in accordance with the regulations.

10 DAN MONROE: Does that answer your question?

11 MERVIN WRIGHT, JR.: Yes, thank you.

12 DAN MONROE: Other questions?

13 DONNA AUGUSTINE: I have a question. Even
14 though the museum is not required, they can still
15 do so if they wish, right?

16 STEPHEN SIMPSON: Certainly, and many museums
17 do.

18 DAN MONROE: Very good. Thank you.

19 If we could, let's please have the members
20 from the San Carlos Apache Tribe and White Mountain
21 Apache Tribe who are here to testify come forward,
22 and in my notes it appears that we have six folks
23 who wish to testify. Is that correct, David?

24 DAVID TARLER: That's correct, Mr. Chairman.

25 DAN MONROE: And could we begin by having

1 Vincent Randall, Manager, Apache
2 Culture/Traditional Cultural Authority, Yavapai-
3 Apache Nation begin testimony. Randall.

4 **PRESENTATION**

5 **VINCENT RANDALL**

6 VINCENT RANDALL: Thank you.

7 (Native American language.)

8 Thank you. Good morning, members of the
9 board, it is an honor and a privilege to be able to
10 come before you to state what is very important to
11 us, what we call the (Native American language),
12 which is the basic of life of respect for the
13 almighty God that created all of us, and this
14 morning to be able to come before you and present
15 our views concerning what's on our hearts. And as
16 I introduced myself, I'm a (Native American
17 language), which means like of the human beings, a
18 sub branch called the (Native American language),
19 (Native American language) means to go hunting. So
20 I am of the hunters' group. My clan - we're
21 matriarchal. My clan is (Native American
22 language), which means over the top, on top in the
23 central Arizona, that would be the Flagstaff
24 country and all the way to Show Low in the pine
25 country. I was born as a gift to my father's

1 people, which are (Native American language), which
2 means the Willows Growing Out of Rocks people near
3 Payson, Arizona. My given name, my given adult
4 name is (Native American language), which means Old
5 Man Hunter, and in English I am known as Vincent E.
6 Randall, and again it is a privilege to be here.
7 At this time I would like to introduce Vernelda
8 Grant, who will come up now and sit with us, and
9 Mr. Ramon Riley. Vernelda is from San Carlos, and
10 Ramon Riley is from White Mountain. And we have an
11 Apache that lost his GPS, Mr. Steve Titla, and he
12 hasn't come yet. I don't know where - We also have
13 Mr. Seth Pilsk who works with us here, my wife,
14 Erie, my niece April Hernandez, and my aunt
15 Elizabeth Rocha, one of our Elders. At this time
16 before I begin we do have some information prepared
17 for the board and at this time I would like to have
18 April pass them out.

19 Today we are here because I think one of the
20 things that is of the most importance to us and
21 it's not only to us but to all of our people that
22 lived in this continent we call North and South
23 America, and that is the understanding of who we
24 are, where we come from, and why we're here. It
25 seems to me that whenever disputes or anything come

1 up or any laws are written, our perspectives are
2 never taken very seriously. It is always in the
3 due respect of the laws and interpretation of your
4 way of life that came across on the boat.

5 And when these things are written into law,
6 such as the man stated previously before me, about
7 the question of why – the question of why the
8 museum doesn't have to say that it's – whether it's
9 sacred, and that's your terminology, any
10 interaction and things that coincide with the
11 almighty God or Grandfather Spirit – whatever we
12 call him, we call him (Native American language),
13 which means The Ruler of Our Life – is holy.
14 Sacred is a place like where the people died on
15 9/11. Sacred is a place where like to us is
16 Gettysburg, to be respectful when major events took
17 place. But in your own category, sacred would be a
18 place like Mount Sinai, where Moses received the
19 Ten Commandments cut into stone. That is a direct
20 interaction with the Almighty. And that's how we
21 view our things and that's why we're here today and
22 also because it is intended for the use of all of
23 our people.

24 I'm here today because not necessarily did
25 they decide they come from my area, but we call

1 them (Native American language), which means
2 Mountain People, but they're part of us. And it
3 affects – what happens in White River affects
4 people in Camp Verde just as much as it affects
5 people in San Carlos. So it is these holy items
6 that we're here for because it affects all of us,
7 and it – whether you know it or not it also affects
8 you. It affects all of us as human beings because
9 we were created by one great, almighty God, or
10 whatever you have a name for, whether it's Yahweh,
11 (Native American language), or whatever, but he is
12 the Maker, so it is that intent of respect that we
13 are speaking of that we're here today. We have had
14 no problems with the museum up to now. They have
15 been very respectful and very professional. It is
16 only when these items were considered cultural
17 items that we are here.

18 The reasons why the Western Apache NAGPRA
19 Working Group needs this item characterization, I
20 would like to introduce a statement. The claimed
21 items belong to powerful Holy Beings on whom our
22 wellbeing depends. We greatly respect these Beings
23 and we are obligated to accord them the full
24 measure of respect. According that respect in
25 regards to museums includes ensuring the proper

1 handling and disposition of their items, which
2 often requires repatriation and ensuring the public
3 acknowledgement that our knowledge of the Holy
4 Beings passed down for countless generations is
5 true for all Apaches now and in the past. The
6 information that we have provided the museum
7 demonstrates and affirms that these items are
8 sacred objects and objects of cultural patrimony.
9 It is then difficult and painful for us to accept
10 these items with any doubt cast upon the validity
11 of our statements regarding our own central
12 beliefs.

13 We must therefore strive to have the museum,
14 or absent that possibility the Review Committee,
15 publically acknowledge that Apaches now and at the
16 time of alienation believed that these items are
17 what we claim them to be and that our supporting
18 statements are true. It is dangerous for us not to
19 fight for these acknowledgements.

20 Two, the working group believes that NAGPRA is
21 civil rights legislation enacted as an attempt to
22 right past wrongs. For Apaches righting these past
23 wrongs includes healing the damage caused by the
24 alienation of the claimed objects and the
25 circumstances which compel that alienation. While

1 the repatriation of objects alone goes a long way
2 in righting these wrongs, it does not fully
3 facilitate healing. NAGPRA provides for further
4 healing by allowing museums to state whether
5 objects are unassociated funerary objects, sacred
6 objects, objects of cultural patrimony, or
7 combinations of these. The acknowledgement that an
8 item is an object of cultural patrimony is a tacit
9 admission that museums at a minimum have objects
10 that are not rightfully their property or at the
11 maximum that they were at least a party to
12 wrongdoing. Such an admission by the museum would
13 help appease the Holy Beings who were wronged so
14 many years ago and provide a measure of peace of
15 mind for Apache communities. We believe that
16 stating such a determination would fully satisfy
17 the moral spirit of NAGPRA and justice. While we
18 had hoped that the museum would make the
19 determination publically, we would like the Review
20 Committee to make the determination in order to
21 attain the highest level of justice possible under
22 the law.

23 I have now been before this Review Committee
24 for the third time, and every time we have come it
25 always has to be we are never accepted as an equal.

1 We always have to prove something. And the most
2 humiliating thing that always happens is more
3 documentation. We have lost an Elder that told
4 this committee back in Tulsa a few years back that
5 in your holy book called the Bible the last book in
6 the Bible is Revelation. And he asked you – and
7 this man's name was Carlyle Russell, who is no
8 longer with us – asked you are there any more books
9 after Revelation? And he said – and he answered it
10 for you and he said no. Well, what we're telling
11 you is it. There's no more after Revelation.

12 But it's always here we are again today,
13 defending what we believe should be a mutual
14 respect, and it becomes always humiliating. And
15 the big thing is because evidently you don't seem
16 to want to understand our beliefs and beliefs to be
17 equal to yours, whatever your beliefs are. And
18 sometimes I wonder myself what you really do
19 believe. Sometimes people say the greater American
20 society is considered capitalist and you only
21 believe in money, power, not a coexistence of life
22 the way it's supposed to be, to enjoy life and to
23 walk on this earth and to respect your fellow man.

24 And we're here also because these things that
25 are holy to us are considered jewelry sometimes,

1 which is very humiliating. It's our communication
2 with our almighty God that we use that have been
3 given to us. It's not dreamed up by somebody
4 sitting on the beach or on top of the mountain, so
5 to say. It is a God-given way and knowledge and
6 instructions in how to use these things, which
7 brings up a point that recently a museum official
8 told us that our culture should only have a few
9 objects to be considered of cultural patrimony; you
10 guys have too many items. And to a society such as
11 like ours everything is living and everything that
12 has life has power, and it is through these powers
13 that help us and all of these things that we are
14 talking about there may be many but you think about
15 it, if there is life in many things and all things
16 then there are a lot of powers out there. And
17 that's what we're going to hopefully share with you
18 today so you understand where we're coming from.

19 In our traditional ways we live in prayer. I
20 think in your book in the book of Thessalonians
21 there is a verse that says pray unceasingly. If
22 you lived by your book you should understand us
23 when we say that we use all of these so-called
24 items by you, which are holy things to us, in our
25 prayers. And each one, as we will find today, has

1 a certain way and meaning to us.

2 At this time, I would like to read a statement
3 by Mr. Keith Basso. Mr. Basso has been working
4 with us and has lived among us for something like
5 over 40-some years. He has been a vital member of
6 the Cibecue community when he first came out as a
7 young man and has lived with us and has talked with
8 many Elders that are now gone, so he understands
9 and respects us.

10 Statement of Keith Basso to the NAGPRA Review
11 Committee. At the request of the Western Apache
12 NAGPRA Working Group, I have authored statements in
13 recent years about Western Apache conception of
14 sacred objects and objects of cultural patrimony.
15 Although this statement contains information
16 presented in the earlier ones, it describes Apache
17 cultural practices in more inclusive items. My
18 description is based upon conversations with
19 Western Apache men and women, mainly from the
20 community of Cibecue on the Fort Apache Indian
21 Reservation, which have taken place over the past
22 50 years, 1959 to 2009.

23 A material object that is blessed or prayed
24 over by a Western Apache medicine man or woman
25 becomes the property of one or more metaphysical

1 powers which penetrate the object, permeate it, and
2 transform it from an inanimate state to an animate
3 one. The object, which then is alive, holy and
4 ready for use in traditional ceremonies,
5 personifies the power that has entered it and is
6 designated as such in ceremonial proceedings.

7 Because the object remains in a holy state
8 indefinitely, it is handled with great care until
9 retired from active use and permanently put away.
10 This is accomplished by placing the object in a
11 secure location in the wild, blessing it again,
12 giving thanks for its assistance, and leaving it
13 undisturbed to return to a natural state. In this
14 way the object is respectfully returned to the
15 metaphysical power which has facilitated its use.

16 During the object's life, the medicine man or
17 woman who initially blessed it or alternatively a
18 person to whom the object has been given is
19 regarded as the object's custodian or keeper. In
20 either case the power that animates the object
21 remains its rightful owner. Different types of
22 holy objects are subject to different prescriptions
23 regarding ceremonial use and disposition. For
24 example, *gaan* head coverings and all other items
25 used in *gaan*-related rituals must be used only once

1 and disposed of shortly thereafter in many *gaan*
2 ceremonies. Other types of holy objects including
3 caps and shirts worn by medicine men, buckskin
4 painted with religious symbols, medicine strings or
5 medicine cords, and wristlets, necklaces and other
6 so-called adornments that have minerals, plant
7 parts or feathers can be used repeatedly over
8 extended periods of time. But these objects too
9 must eventually be disposed of in the manner
10 indicated above. If this is not done or if it is
11 done improperly the power residing within an object
12 will take offense and may refuse to cooperate when
13 called upon at a later date to assist in human
14 affairs.

15 The Apache objects at the American Museum of
16 Natural History identified for repatriation by
17 members of the Western Apache NAGPRA Working Group
18 are sacred objects and objects of cultural
19 patrimony. To describe them merely as cultural
20 items, the label assigned them by the museum,
21 demeans the objects and the powers residing within
22 them, thereby depriving both of the respect they
23 require. For these and other reasons, the matter
24 before this committee should not be viewed as
25 trivial quibble over competing classificatory

1 terms. It is far more than that. From a Western
2 Apache perspective, the matter goes to the heart of
3 what is right and wrong in the world of the sacred,
4 a moral issue with profound implications for all
5 Apache people. Signed, Keith H. Basso, Regents
6 Professor Emeritus, Distinguished Professor of
7 Anthropology Emeritus, University of New Mexico,
8 September 26, 2009.

9 So we are here today, I think the key word is
10 respect, nothing more, nothing less. That you
11 respect our – what we believe in because surely I
12 don't know what you believe but if we in our museum
13 had the Ten Commandments inscribed in stone we
14 would not give them back to you as cultural items.
15 We would give them back in the respect that you
16 give them the respect.

17 At this time I would like to introduce the
18 testimony, a taping of two people from the San
19 Carlos Reservation, one of our renowned PhDs,
20 Mr. George Starr, I believe, who is 97 years old,
21 and his daughter, and Tommy Patton who interprets
22 what we're talking about.

23 [Audio recording played.]

24 **RECORDED INTERVIEW – GEORGE STARR, LENORA**

25 **ROBERTSON, TOMMY PATTON**

1 LENORA ROBERTSON: My name is Lenora Robertson
2 and my father is George Starr who is 96 years old,
3 and when he was a little boy they took him up onto
4 Mt. Graham. The men were Ducee and John Rope, John
5 Robertson's dad. And so they took him away for
6 four days, she said, and then in four days they
7 came back just like Crown Dancers. And when they
8 come back they dance for four days. The thunder –
9 she said that there was lightning and thunder and
10 no rain. And all these horses were over there too,
11 and the horses were just dancing by themselves too.
12 That was a good dance. Everybody was just shocked
13 and surprised that these – and he was the only one
14 that was small then. But this medicine man chose
15 him, that he was the one that was chosen that he
16 was going to live a long life, and to this day that
17 he is, he is still living, so that's the way he is.
18 He knows how to pray and – but he doesn't talk
19 about it though. Well, he's been dancing ever
20 since he was seven years old until he retired about
21 1980-something, 1989 or 1988 or '87, that's when he
22 retired. So he's been dancing all these years and
23 when he dances he jump way up high. He's got no
24 sweat on him or nothing. He just – it's the way he
25 is. A lot of people still talk about him even

1 today.

2 GEORGE STARR: (Native American language.)

3 TOMMY PATTON: He said all this, he was saying
4 when he was a little boy back then he seen them -

5 GEORGE STARR: (Native American language.)

6 TOMMY PATTON: When they heal people, he seen a
7 lot of people get healed and certain medicine men,
8 all the stuff that they have in there, he seen it.
9 They're used for some things, like the crystals,
10 the first one, the crystals with that one
11 arrowhead, he recognized, that one they used for
12 people who had the headache sickness or sometimes
13 (comment inaudible) certain those things, so they
14 used that to help heal that person. They know that
15 certain way they're taught, a certain way because
16 all these medicines have different prayers, not all
17 the same.

18 GEORGE STARR: (Native American language.)

19 TOMMY PATTON: Yeah, what he was talking about
20 was that like sort of like when you're given a
21 vision, you're like sort of like the medicine
22 people they give you a gift and they showed you how
23 to use these things, that's the reason why they
24 have a certain (comment inaudible).

25 In the Apache way we had a lot of different

1 things. There was healing for babies that women
2 were given. There was a healing way for all
3 certain kind of animals. There was an antelope
4 medicine men. There was an deer medicine men.
5 There was a bear medicine men. All these animals,
6 the ants, just everything, the skunk, the beaver,
7 the badger, they all have a certain gift that's
8 given to them. That's why there's certain ways of
9 — even the charm, it looks like a necklace. That's
10 used in the healing way. Just like he recognized
11 that, if it's given to him, yes, he takes care of
12 it, but it's not him. It was given to him from up
13 there. So you know, whenever he is done with it is
14 when they put it away. So yeah, he said, you know,
15 I asked him, when they put it away it was sort of
16 like giving it back to them.

17 GEORGE STARR: (Native American language.) It
18 going back to you, you know, something happen, you
19 know. (Comment inaudible.) They got different
20 stone. (Native American language.)

21 TOMMY PATTON: If it's not done properly or put
22 away properly there is repercussions. Not only
23 that, but wherever it's at too it can affect those
24 people. They're going to be angry like the way God
25 gets angry. It's just the same — they were very

1 important. They were used a certain way. They
2 were to certain people how to doctor people, and
3 once you're given it you've got to give it back
4 respectfully, put it away so it won't hurt nobody.
5 That's the reason why we put things away. But if
6 it's up in a museum it's searching for its home.
7 The mountain is where it knows where it was used
8 at, and if not, it's going – more likely, you know,
9 it's just going to bring a curse to everybody.

10 [Audio recording ends.]

11 VINCENT RANDALL: At this time I would like to
12 introduce Ramon Riley from White River, Arizona, a
13 member of the White Mountain Apache Tribe who will
14 speak on the importance of why these items have to
15 be put away.

16 **RAMON RILEY**

17 RAMON RILEY: Good morning. First of all, I
18 would like to introduce myself. I come from a
19 traditional family that have done ceremonies and I
20 myself a traditional person, and I have – I am one
21 of the select Crown Dance group society. People
22 call it society, but there is a special group of
23 Crown Dancers that also George Starr was one of
24 them and (Native American language).

25 I've got in here a sacred – you guys call it

1 sacred, to me it's a holy object. This was made
2 for me to use to pray with and also to carry
3 wherever I go. And this has gone all over the
4 United States where I have been. This wood part I
5 shouldn't tell you but it came from the lightning-
6 struck tree, and this is the sacred cross that I
7 carry and also my medicine bag. I never show this
8 to anyone, but I've got all kinds of elements in
9 here that I use to pray with. And I never show
10 this to anyone also. I use it in my prayer. And
11 one day when I – when my time has come to go home
12 to the Creator, my family knows what to do with
13 this. They have to take it back to the mountains
14 and put it away. And I guess Rome would call it
15 sacrilegious if you don't follow the protocol of
16 putting something like this away.

17 And I cherish this and my family knows about
18 it and I use this in my prayer and ceremonies, and
19 like I said I never show it to anyone but because
20 the museum wants more information that's why I hope
21 the holy people will forgive me for doing this.
22 And if you don't put these items away, my sacred
23 cross, there will be bad things happening to me or
24 my family or my tribe. As it is we have social
25 problems on our reservation. I think we are the

1 highest suicide rate in the nation and other, many
2 social problems, so because of this we have to put
3 them away.

4 VINCENT RANDALL: Thank you, Ramon. At this
5 time I'd like to introduce Vernelda Grant from San
6 Carlos, who will introduce herself and speak about
7 these holy objects and about how they are still
8 very important to us today.

9 **VERNELDA GRANT**

10 VERNELDA GRANT: Good morning. (Native
11 American language.) My name is Vernelda Grant.
12 I'm the tribal archaeologist and the Tribal
13 Historic Preservation Officer for the San Carlos
14 Apache Tribe, and I'm the – of many titles I have,
15 some of them are the NAGPRA representative and the
16 Director of the Historic Preservation Department
17 comprised of now two people that represent eight
18 programs.

19 It's very interesting to me to be here again,
20 this time giving the – giving you an idea or giving
21 you things to think about as a young person, being
22 employed managing cultural resources for your
23 people, and also having a responsibility as an
24 Apache person and as a female Apache person to some
25 of the things that it's very sometimes difficult to

1 deal with and it's very sometimes heavy to carry.
2 But just to go through quickly and not to sound too
3 like I'm bragging because this is not even it but
4 just to prove a point is archaeologically in my
5 field I didn't start to study until I graduated
6 from high school, freshman year, and that was - I
7 mean, freshman in college was in 1991. I had my
8 first job in my field at that time, and I graduated
9 with a bachelor's in cultural anthropology in '96.
10 I interned at the Smithsonian's National Museum of
11 Natural History Repatriation Office under Chuck
12 Smythe and Stuart Speaker that summer. And in '97
13 I started the grad program even though I thought to
14 myself that the route I'm taking was a really bad
15 route because it's so not who I am and not what I
16 live to be. And then I found myself in '99 to be
17 graduating with a masters in Southwest archaeology
18 and applied anthropology under folks who are really
19 well-known people in my field, like Wolf Gumerman,
20 Francis Smiley, Chris Downum, Miguel Vasquez,
21 Kelley Hays-Gilpin, going to the field school of
22 Barbara Mills from U of A.

23 I've belonged on a lot of national- and state-
24 level committees, Governor's Archaeology Advisory
25 Commission, the Advisory Council on Historic

1 Preservation's Native American Advisory Group,
2 which has helped me to work with – you know, bridge
3 the White House with our Mount Graham issues, and
4 then recently bridging the White House and many
5 leagues of churches from the South to address –
6 help us address the Oak Flat and Apache Leap mining
7 issues.

8 And the reason why I say all this stuff is
9 because there's – in my life as an Apache woman,
10 there's a reason why I've been taken to all these
11 different – I've been a part of these things in my
12 life. There's a reason why I'm an archaeologist
13 and doing the things that I do for my people. And
14 it's – and it's something that was spelled out for
15 me to be before I came back to this earth in the
16 form that I am today, and it's something that in my
17 prayers that I always ask for guidance for this
18 sometimes burden but sometimes really blessings,
19 and there's a reason why I do the things that I do.
20 And being female makes it hard, being a young
21 person makes it hard. But I do it, and I do it
22 with the guidance of Ramon and Vincent, Steve,
23 Seth, and everybody else that supports me. I have
24 friends in this room as well that support me.

25 And I know that you guys know how difficult it

1 is to speak on these issues. It's not something
2 that makes you popular. It's not something that
3 you — that builds your career. It's something that
4 you — it's on behalf of all your people. It's
5 something that's on behalf of all of humankind.
6 And it's the balance of our lives and the lives of
7 our people and humankind that needs to be
8 addressed, especially at this time.

9 And it's very important for us young people,
10 especially in our Apache territory to understand
11 and to know these things, because as a young person
12 I was taught how to tie feathers together at a very
13 young age. I was taught, you know, about the
14 things that Ramon shared with you this morning. I
15 can't even come to you and take my things out and
16 to share that because it's such — it's such another
17 level and another responsibility and another form
18 of trust to do that. And for Ramon to do that it's
19 so much — it takes so much to do that and to share
20 these things.

21 It's very important for these things to return
22 home because it affects the social ills and the
23 social issues of our society. It affects me. It
24 affects you. It affects my colleagues and our
25 neighbors, the towns of Globe and Safford and, you

1 know, surrounding San Carlos. It affects everyone.
2 People don't think about that. And you know, it's
3 very important for us to keep things in balance and
4 to balance school, balance our responsibilities in
5 our lives, balance our responsibilities as Apache
6 people, traditional ways. And you know, I just
7 wanted to share this with you because it is very -
8 you know, how much more can we say and how much
9 more can we push and to give you more information.
10 It's very - it's such an insult to something -
11 these things are so holy, and it's - thank you for
12 listening to my comments.

13 VINCENT RANDALL: Thank you, Vernelda.

14 At this time, I'd like to introduce Steve
15 Titla from the great community of Bylas on the San
16 Carlos Apache Reservation, who is Apache himself.

17 **STEVE TITLA**

18 STEVE TITLA: Good morning, Review Committee.
19 Thank you for hearing the statements that we're
20 making this morning. We came from Arizona
21 yesterday, and when we came here we noticed that it
22 was three hours ahead. So we got up at 3 a.m. this
23 morning our time. So forgive me if I misspeak
24 here. We're still kind of groggy sitting here
25 speaking, but thank you for hearing us.

1 (Native American language.)

2 The request that we are making from the Review
3 Committee is that pursuant to 25 U.S.C. 3006
4 (c)(3), we request the Review Committee to make
5 findings of fact that the items that the White
6 Mountain Apache Tribe, San Carlos Apache Tribe are
7 claiming, that the findings of fact be that they
8 are sacred objects and they're objects of cultural
9 patrimony.

10 What I want to talk to you about is the
11 conditions of the reservation at the time that
12 these objects were taken by the Goddard, (comment
13 inaudible), Earl Goddard was his name, from the
14 American Museum of Natural History in 1914. At
15 that time, before that time the Apaches were
16 hunters and gatherers in Arizona, New Mexico and
17 old Mexico. And during the Apache wars with the
18 Calvary, the U.S. Government, the Apaches finally
19 were put at Old San Carlos, from the White Mountain
20 Apache, all the different Apache groups, from
21 Yavapai-Apache Nation, Tonto Apache, San Carlos
22 Apache, White Mountain Apache, Apaches from New
23 Mexico and other areas were put at Old San Carlos.

24 And if you read the military journals of the
25 day, the generals at the time said we need to

1 concentrate the Apaches, and so they put them in a
2 concentration camp at Old San Carlos, and the
3 Apaches were hunters and gatherers with large
4 traditional land areas that they traveled to
5 throughout the years. But then the government, the
6 U.S. Government through the Calvary said that the
7 Apaches were stopped from going anywhere anymore.
8 They were put at Old San Carlos, and they could not
9 hunt or they could not go to the traditional areas
10 to gather their foods or medicines. They were
11 stopped from doing that too. The Army gave them
12 rations on a weekly basis which were not enough,
13 and so at the time the Apaches were stopped from
14 all their traditional ways, all their weapons. The
15 government also stopped the ceremonies of the
16 Apache, so that the Apaches could not practice
17 their traditional religious ways, and the
18 government sponsored Christian missionaries among
19 the Apaches at the time. That's how the churches
20 on the Apache reservation started.

21 So being at the Old San Carlos and at Fort
22 Apache for many years, by the time that Earl
23 Goddard showed up, the Apaches were in a very
24 demoralized state. There was extreme poverty on
25 the reservation at the time, extreme suffering, a

1 lot of diseases, a lot of epidemics among the
2 Apache people at the time. The government wanted
3 to make them dependent, totally dependent upon the
4 government by stopping all their life ways.

5 And so in this extreme state of poverty, in
6 this extreme state of social ills, the Goddard -
7 the museums came around, and you've heard the -
8 Vince Randall and Ramon Riley and Vernelda talk
9 about the importance of the objects here, that they
10 are alive and that they were given through the holy
11 beings to these people as very sacred items. But
12 during the time of this extreme poverty and extreme
13 anxiety and extreme demoralization of the Apache
14 people, these museum people came around and said
15 that we want to get these items from you. And
16 since the word of the Calvary was absolute at the
17 time, if you did not listen to the Calvary then
18 they put you in jail or they did worse things to
19 you. If you tried to leave the reservation, then
20 they hunted you down. And you probably read about
21 the history between the Apache and the Calvary.

22 But in that dire situation, the museum people
23 came around and took these items from the Apache
24 people. What Ramon showed you, he would not
25 willingly part with it under any situation but

1 these Apaches at that time were under extreme
2 anxiety, extreme demoralization at the hands of the
3 U.S. Government. And so in that situation, in that
4 state of mind, these items were coerced and
5 unfairly taken from the Apache people at the time.

6 And in law school, in Contracts 101, they
7 taught us that in order to have an agreement, in
8 order to have a contract, you need to have a
9 meeting of the minds. Both parties must agree
10 willingly, knowledgably, and without any coercion,
11 without any adhesion. That way you make a
12 contract, an agreement to sell perhaps. But in our
13 mind the Apache position is that there were no
14 contracts made with the museums but that these were
15 contracts of adhesion practiced by the U.S.
16 Government, the Calvary and the museum people at
17 the time, and that if you acquired these sacred
18 items from the Apache people in that type of
19 situation then they are not contracts, but they are
20 contracts of adhesion and that they are void from
21 the beginning, and so there would be no contracts.
22 And so the museums have no right to hold these
23 items, sacred items of the Apache people.

24 And so we ask the Review Committee to make
25 findings of fact that these items are items of -

1 they are sacred objects and that they are objects
2 of cultural patrimony. One thing I forgot that I
3 want to tell you about is part of my family
4 history, my knowledge through the traditional
5 cultural ways. My family has been involved with
6 traditional ways for a long time. My late mother's
7 grandfather was one of the medicine people that
8 worked with these ceremonies, and my late father's
9 grandfather also. Some of them fought with the
10 U.S. Calvary, but they still practiced traditional
11 ways in secret, I guess, they know all the
12 mountains around Arizona, New Mexico, and Old
13 Mexico, and they would travel to the mountains in
14 secret and hold these ceremonies without the
15 knowledge of the U.S. Calvary or the government
16 people or the missionaries at the time.

17 And so my family has been involved with this
18 for many years through the generations, my uncle,
19 my late father's brother, younger brother right now
20 is a medicine person. He conducts the *gaan*
21 ceremony right now. My grandfather – my mother's –
22 we're a matrilineal society, so you are the clan of
23 your mother. And so I told – I introduced myself
24 to you in that way, what my clan is a while ago,
25 and who I am born to, and that's how these people

1 here introduced themselves to you also, our clans
2 through our mothers. So my mother's father,
3 they're both passed away now, they were medicine
4 people also, so we've had medicine people,
5 traditional conductors of ceremony throughout my
6 family history. And so I just want to make a point
7 to you that the museum person here, from the
8 American Museum of Natural History in 1914 did not
9 take these items through agreement of the Apache
10 people, but that they took these items through
11 unconscionable means and were not fair or honorable
12 dealings.

13 And so we thank you, Review Committee, for
14 listening to our statements from the White Mountain
15 Apache, San Carlos Apache, and we ask that you make
16 findings of fact in this area according to what the
17 requests of the tribe is. So we thank you.

18 **VINCENT RANDALL**

19 VINCENT RANDALL: Thank you, Steve.

20 In closing I would like to say that it may
21 seem equivocal that we're here because of two
22 words, cultural items versus cultural patrimony,
23 but it's very important to us. As I said before,
24 the museum has been respectful and professional.
25 We ask them to go one more step than that, the

1 museum people, to return them to us under cultural
2 patrimony.

3 When we first came up before the committee at
4 Tulsa, one of the things that our Elders, who some
5 of them have passed away, our PhDs, one of the
6 questions that concerned us was is our ultimate
7 goal to bring these items home to be put away, but
8 our Elders said, no, it has to come back the right
9 way, it has to come back with the respect and the
10 way it should be handled, which is the holy way.
11 If we don't do it this way, then we offend the Holy
12 Beings, the (Native American language), the Ruler
13 of our Life, and we pay heavy consequences for it,
14 and that's why we're here. It - I guess in your
15 language you call it semantics or whatever, I don't
16 know, but we're here because it's detrimental to
17 our life, our way of life, and that we can only
18 give it the proper respect that it should be given.
19 So we're here because of those two words, cultural
20 patrimony. Thank you for your time.

21 DAN MONROE: Thank you for your testimony.

22 Are there questions on the part of the Review
23 Committee?

24 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

25 ROSITA WORL: Mr. Chair.

1 DAN MONROE: Yes.

2 ROSITA WORL: I don't have a question but I
3 want to just say *Gunalchéesh* (Native Alaskan
4 language). I really appreciate and acknowledge you
5 as my brothers and sisters from the South, and I
6 really appreciate Ramon sharing with us something
7 very sacred that I know that you don't normally do
8 that and I know that it's a statement as to the
9 power and the importance of what you're asking. So
10 I just wanted to say from a Tlingit, *Gunalchéesh*,
11 Noble People.

12 DONNA AUGUSTINE: Are we going to be able to
13 talk about this tomorrow or do we discuss it now?

14 DAN MONROE: Now.

15 DONNA AUGUSTINE: Now?

16 DAN MONROE: Now.

17 DONNA AUGUSTINE: Okay. In listening to the
18 presentation – by the way (Native American
19 language), I'm Thunderbird Turtle Woman, Miqmac.
20 Even when I was reading through the binder, I could
21 feel it, and there's one part that I had left out
22 and I didn't read it until last night, and that was
23 the Notice of Intent to Repatriate cultural items
24 from Sherry Hutt. And as I started to read through
25 this last night, I started to – I read everything

1 else, but last night I started to read through
2 this, and something happened. I do ceremonies and
3 I've been doing that for years, and as I started to
4 read I had to stop because it seems like from my
5 neck down here to my right – just below my shoulder
6 and on the left side as well, I started to get this
7 like burning feeling, it was hot. And I kept
8 reading because the items were being described, and
9 I had to stop for a minute and then I started again
10 and it started again, that burning, it was like
11 almost like somebody was putting something burning
12 me right here.

13 And I had to stop and I took my sweet grass
14 and I closed this, and I said, even as a member,
15 even as a person of another tribe, I know how
16 sacred this is. The very fact that this has to be
17 listed, the very fact that even this morning, that
18 a sacred object had to be brought out, it didn't –
19 I guess I'll get back to last night, I'll talk
20 about what happened last night. I felt that as a
21 person from another tribe that has done ceremonies
22 for years, and I work with ancestors and I do
23 reburials, and I do traditional burials, I do all
24 different, many different kind of ceremonies, that
25 I felt that I could not even read the rest of this

1 because it is yours. It belongs to you. It is
2 your gift. It is your sacred items, and I felt the
3 way I felt as if I was going through somebody's
4 medicine bag or medicine pouch and disrespecting in
5 that way. And even as a traditional woman, I know
6 that we have to respect other peoples' ceremonial
7 objects, even a woman to a man, even if that's your
8 husband that carries a pipe or carries an eagle
9 fan, you have to ask permission from your husband
10 before you can even move that. That is – that's
11 spiritual – cultural protocol all the way across.

12 So I knew that last night that these objects
13 were really objects of healing, spiritual healing,
14 and what occurred to me was in that healing the
15 spirits are very wise. And even right now, they
16 are giving us an opportunity for that healing, that
17 spiritual healing. We cannot just look at this and
18 read this and think about this as physical only,
19 physical objects. They are spiritual objects. And
20 so that healing that is – I feel that what is
21 needed before even an apology – and I can use as an
22 example, in Canada, the issue on residential
23 schools and boarding schools and all the atrocities
24 that were done to the Native people, before even
25 the apology first had to come the acknowledgement,

1 the acknowledgement that pain was inflicted and
2 that people were hurt, that our people were hurt.
3 And so I see this now, and so even – and I feel
4 this, that even though it was – happened back then,
5 it is still carrying that generational, spiritual –
6 I don't want to call it abuse, but disrespect. It
7 is generational and it's here with us today.

8 And so the healing on both sides, to
9 acknowledge that when somebody says these are
10 sacred items or objects of cultural patrimony
11 what's – you know, in acknowledging that yes, that
12 these are scared objects and objects of cultural
13 patrimony in just acknowledging then you are
14 acknowledging the pain that the people here in
15 front of us and their communities and their tribe
16 has gone through, generational, generational. And
17 it makes me wonder, what – where is sacred now?
18 And I tried to use an example sitting here. What
19 was mentioned here today was the Bible or the Ten
20 Commandments, the commandments in stone, but I
21 couldn't even find an example. In the non-Native
22 world, I couldn't figure out what could we say,
23 what could a Native person say so that the non-
24 Native world understands that sacredness? The only
25 way – only thing I could use as an example again

1 was something with the Native tradition, and that
2 is the original sacred pipe that is being held in
3 Green Grass, South Dakota. That pipe, that
4 original sacred pipe was bought by a – brought to
5 the people by a spirit woman and it's still there
6 today, and so that's the only example I can use.

7 So last night when that happened to me and
8 even when I just opened this up when it was just
9 handed to us earlier, I just opened it up and I
10 could see this, I had to close it, because it's
11 like to me uncovering somebody's medicine bundle.
12 It's like going through – worse than going through
13 one's purse, it's going through something that is
14 sacred and doesn't – you have no right to go in
15 there. So that's how it felt like to me. So I say
16 it's sacred and these are objects of cultural
17 patrimony, and there is a chance for healing here.

18 There's – as we know through history there's a
19 lot of things that have been done. There's a lot
20 of injustice, and why should anybody have to come
21 here and bring out their sacred objects and like
22 feel so humiliated to talk about something that is
23 so personal, that is so sacred, and why should
24 anybody have to prove that – have more evidence
25 that it is sacred. Just the very fact that it is –

1 it was used by their people and still used today,
2 it's sacred and it's an object – and these are
3 objects of cultural patrimony. So I just thought I
4 would bring that up. Thank you. (Native American
5 language.)

6 DAN MONROE: Thank you, Donna.

7 Other comments, questions?

8 MERVIN WRIGHT, JR.: Yeah, there's no question,
9 you know, the items are of cultural patrimony. And
10 I appreciate Mr. Titla's description – (comment
11 inaudible) – you know, reading the regulations and
12 I appreciate Ms. Mattix's description of what was
13 required by the law, by the regulation, and – but I
14 think that's where we're stuck is in the way that
15 the regulations are, one, interpreted and, two, how
16 it's laid out. Certainly, I understand that the
17 Review Committee may or may not have the authority
18 to make some determination here based on this
19 request. But it's clear that consultation has
20 occurred. Information has been provided that's
21 suitable, it's adequate, and I believe it meets the
22 minimum requirements for making a determination
23 based on Apache culture, Apache tradition. And I
24 feel that, you know, I agree that we're having to
25 justify, we've having to prove, we're having to

1 demonstrate sometimes beyond reason that there is a
2 connection.

3 I didn't bring my laptop with the regulations,
4 the CD that was provided to me, but the regulations
5 that I do have do show that the museum does have to
6 complete that summary and it does list sacred
7 items, sacred objects, items of cultural patrimony
8 as part of that using the best available
9 information. Now, if they did not have that
10 information available to them – I mean, it's
11 clearly evident based on how these items were
12 instruments and were put together, somebody sat
13 there and took the time, put their mind, their
14 heart into these – into these items, I mean even to
15 the point where scraping the deer hide, tanning the
16 deer hide, beating an object, it all goes with that
17 thought, it all goes with that feeling.

18 And so, you know – I mean, even to sit there
19 and have that kind thought, as I look at it, that's
20 how simple a prayer is. You put that prayer on it,
21 even, you know, when you look at what happens in
22 the church, a place of worship, they have holy
23 water. Before that water become holy, there's a
24 prayer made over that that makes it that way. And
25 so in the same regard, that's how these things come

1 to be in our tradition, in our culture, and I don't
2 know what it takes to convince a museum official,
3 you know, to make that determination. But based on
4 the way the regulations are written and based on
5 the way the procedures are laid out to complete
6 this process, there are loopholes. And it's my
7 hope that we're going to be able to make those
8 determinations not using some of the requirements
9 here. I mean, we have to follow these requirements
10 but it seems like we're going a little bit too far
11 in following them, beyond a reasonable doubt,
12 preponderance of evidence, you know, all of these
13 things that are there. And I think for the Western
14 civilization that have come to be in the society
15 that we're having to try to cope with, this is
16 where the challenge exists. And it's my hope that,
17 you know, we're going to be able to bridge those
18 gaps of misunderstanding. And I mean, it gets to
19 that point of just basic respect and trust, and
20 when that is absent that's where we have these
21 problems. Thank you.

22 SONYA ATALAY: I also have some comments that
23 I'd like to say. I want to begin by saying
24 *Miigwetch*, which in our language means "thank you,"
25 to Ms. Grant and Mr. Randall and Mr. Riley, for

1 sharing the information that you shared with us. I
2 have to say that as a Native woman I actually feel
3 – I feel ashamed that you have to come to us to say
4 these things that you already know and to prove
5 these things.

6 And I want to speak now as a scientist, which
7 is to say that this information of NAGPRA, it's
8 what my colleague Mr. Wright was just speaking of,
9 it's about information and about knowledge, and as
10 a scientist, I rely on knowledge and information
11 and I value that – what's called data. And I think
12 that I just want to remind everyone that as
13 anthropologists where we get our knowledge and
14 information and data on these items comes from
15 these people. It comes from people. We don't
16 somehow make that up. We gather – our job is to
17 gather information and data and knowledge and where
18 does that come from? That comes from the
19 traditional people who are the ones who are the
20 representatives to care for this knowledge. It's
21 not ours. We're getting it from somewhere, and in
22 this case it – we're getting it from the
23 descendents of those people who made these items
24 and the descendents of people who – these people
25 continually use these items.

1 So in terms of thinking is there enough
2 information or data or knowledge, I feel ashamed
3 that we have to make this determination. I know
4 the law is written that way and I understand that,
5 but I don't think that that's our place because the
6 people who are the holders of that knowledge to
7 make that determination about whether these items
8 are sacred or cultural patrimony it's not us. It's
9 the people who know, who have the knowledge and who
10 use these items. So I don't feel it's our place.
11 I mean, we're put in this position to have to do
12 this, but it is not our place to make that
13 determination.

14 The people who should make that determination
15 are the ones sitting in front of us. And the fact
16 that someone has to come and show us in the way
17 that they had to do to make this determination, I
18 think it's shameful and I apologize. So I thank
19 you again and I think that for me — it was clear
20 before that, but my point is that just to remind
21 everyone where as anthropologists and scientists we
22 gain our knowledge from. *Miigwetch*. Thank you.

23 DAN MONROE: Eric.

24 ERIC HEMENWAY: I'd like to say thank you also
25 for coming. I know we're all experiencing

1 financial difficulties and just making these trips
2 is quite a burden sometimes. So just you being
3 here physically shows the importance of your work
4 and what you're doing. And it's a tough read going
5 through this, and just reading how these items were
6 alienated from your community and we had the same
7 problems with these collectors, so to speak, coming
8 through our reservation and taking advantage of the
9 dire straits of Native people. And there was one
10 line in here from the Apache man saying, you know,
11 why these items were leaving and he's saying you
12 don't know what it's like to starve. And I was
13 like - that really set the tone through the whole
14 reading. I was like, yeah, I don't. You know I
15 wouldn't have no idea what it's like to experience
16 that and what you're going through. And the
17 practices of this museum of collecting was pretty
18 despicable, so to speak.

19 And when we're writing - I writing claims on
20 behalf of my tribe for Little Traverse Bay Bands of
21 Odawas in Northern Michigan, and the first thing I
22 have to do is determine whether the item that we're
23 pursuing falls under a certain category. Is it an
24 object of cultural patrimony? Is it a sacred
25 object? Is it a UFO, an AFO, is it human remains?

1 That's the very first thing we have to do. And if
2 I tried to send out a claim to a museum saying this
3 is just simply a cultural item, the first thing
4 they would do is reject my claim saying it doesn't
5 fit these categories under NAGPRA.

6 So I think there needs to be more of a level
7 playing field with museums and tribes in this
8 respect, and to take into account more seriously
9 the oral traditions of whatever tribe is requesting
10 an item, because to me that is probably the
11 strongest line of evidence for an object of
12 cultural patrimony is your testimony today. You
13 being here saying that it's still practiced in the
14 community, this is still being passed down from
15 generation to generation. And this is written
16 right into the language of NAGPRA that oral
17 histories are a line of evidence. And I think
18 there's nothing really stronger than that than when
19 you're trying to prove cultural patrimony. It has
20 just as much weight, if not more weight, than any
21 scholarly work or academics, whoever has written on
22 a tribe when you have the tribe speaking on behalf
23 of themselves I think that really tips the scales.
24 So I would like to say *Miigwetch* also for coming
25 here today and thank you.

1 DAN MONROE: Rosita.

2 ROSITA WORL: Thank you, Mr. Chair. Although
3 the museum is not legally required to make a
4 determination as to whether the cultural items are
5 sacred or objects of cultural patrimony, in my mind
6 they are – they should do it. I think there is an
7 ethical and a moral responsibility. And if we look
8 at NAGPRA, we also know that NAGPRA is Indian law.
9 And as Indian law, there is the consideration to
10 act in the best welfare or interest of tribes. So
11 I think it's unfortunate that the museum – did you
12 want to clarify that?

13 CARLA MATTIX: I do want to clarify that but go
14 ahead.

15 ROSITA WORL: Okay. Well, I think there's a –
16 there is an ethical responsibility, but even beyond
17 that from my perspective I think that it is
18 important to make these determinations for two
19 things. One is that the acknowledgement – well,
20 the acknowledgement that they are sacred and it's
21 very clear, you know, from your descriptions, the
22 statements that have been offered, that they are
23 sacred objects. The other dimension is in terms of
24 it being – them being objects of cultural
25 patrimony, what is key to me is that they – the

1 objects were removed without the consent of the
2 tribe, and I think that's - that's a statement,
3 that's an acknowledgement that would be made if
4 they were classified as objects of cultural
5 patrimony. It would say that they are central to
6 the Apache and under that classification it would
7 also say that these objects were removed without
8 the consent of the tribe, that they were held
9 communally, owned - held by the spirits, and used
10 by the community. It was central. So I would be
11 prepared to make a finding of fact from the NAGPRA
12 committee that these objects are sacred objects and
13 are objects of cultural patrimony.

14 DAN MONROE: Carla.

15 CARLA MATTIX: I wanted to make sure that some
16 of the things we talked about at the beginning
17 weren't misunderstood in some way, and there is
18 going to be time tomorrow to deliberate further on
19 this issue. David wanted me to remind you of that.
20 But as far as - a museum or Federal agency is
21 required to make a determination that the item fits
22 in one of the stated NAGPRA categories. However,
23 the thing that's a little more nuanced is for
24 purposes of the notice that goes out in the Federal
25 Register, to state each item by category is not a

1 requirement in the notice. And the notice is there
2 for due process reasons. It's actually to allow
3 others - presumably the museum has been consulting
4 with a tribe that's planning to make a claim, but
5 if there is anybody else in the public, other
6 tribes, anybody else - lineal descendants, anyone
7 else out there that has not been involved in the
8 process for some reason, that is the purpose of the
9 notice is to let everybody know this is going to
10 take place, these items are going to be transferred
11 to a culturally affiliated tribe, does anybody else
12 want to step forward and make a claim during this
13 specific time period. So that's the purpose of the
14 notice, but there is a legal requirement for a
15 museum or agency to make the determination in the
16 first instance that an item fits within a NAGPRA
17 category.

18 STEPHEN SIMPSON: And I wanted to clarify
19 something also. Chairman Wright, you said that you
20 were concerned about the authority of the committee
21 in this matter and in terms of the regulations.
22 What Carla and I mentioned before and what Carla
23 just clarified was that the regulations imposed
24 certain requirements on the museum or the Federal
25 agency in terms of what is in this notice and what

1 kinds of findings they have to make in this notice.
2 The committee has no such restrictions. You are
3 allowed under the statute to make findings of fact
4 upon the request of any party on the categories or
5 the classifications of objects. And so you do have
6 the authority to do what the Western Apache are
7 asking, or not, as you will.

8 DAN MONROE: I'd like to thank each of you for
9 your testimony which took tremendous courage, and I
10 think you can sense that all of us here feel deeply
11 that it's unfortunate that you have to come and
12 provide this testimony. The museum in question
13 made a decision to repatriate all of the objects
14 requested in this case. Implicitly that means that
15 they have legally found those objects to be either
16 objects of cultural patrimony and/or sacred
17 objects. What they haven't done is to explicitly
18 recognize those objects in the Federal Register
19 Notice of Intent to Repatriate. And you've made it
20 very clear why that's important, why that's in fact
21 critically important.

22 I would just point out that when NAGPRA was
23 passed there were obviously many provisions in the
24 law and the statutes and in the regulatory language
25 but there has always been an understanding that

1 while there is law and the letter of the law there
2 is also the spirit of the law. And I regret that
3 we're here – that you're here to have to deal with
4 an issue that in effect involves the spirit of the
5 law in my judgment.

6 I want to thank you for coming and I would
7 like to ask, David, is there any compelling reason
8 for us to wait until tomorrow to deal with this
9 matter?

10 DAVID TARLER: (Response inaudible.)

11 DAN MONROE: Given this – given the situation,
12 the intensity, the courage that it took for all of
13 you, with the committee's approval I'd like to act
14 on this matter now. If anyone objects, we'll hold
15 over until tomorrow. Otherwise, we will act on
16 this at this time.

17 ROSITA WORL: Mr. Chair?

18 DAN MONROE: Yes.

19 **REVIEW COMMITTEE MOTION**

20 ROSITA WORL: Mr. Chair, I would move that the
21 NAGPRA committee under its authority to make
22 findings of fact relating to the identity of the 45
23 objects that the Review Committee make a finding of
24 fact that indeed the objects are sacred objects and
25 are objects of cultural patrimony. I would so move

1 that, Mr. Chair.

2 DAN MONROE: Moved, is there a second?

3 DONNA AUGUSTINE: I'd like to second that.

4 DAN MONROE: Is there a discussion?

5 All in favor of the motion please signal by
6 saying aye.

7 SONYA ATALAY: Aye.

8 DONNA AUGUSTINE: Aye.

9 ERIC HEMENWAY: Aye.

10 DAN MONROE: Aye.

11 ROSITA WORL: Aye.

12 MERVIN WRIGHT, JR.: Aye.

13 DAN MONROE: Opposed? Motion carries.

14 Thank you very, very much. I hope this is
15 some modest compensation for the difficulty that
16 you've had dealing with this painful matter and we
17 deeply appreciate your willingness to come and go
18 through this again.

19 Thank you. We'll take a break for 15 minutes.

20 VINCENT RANDALL: Thank you very much.

21 **BREAK**

22 DAN MONROE: Next we have a request for a
23 recommendation regarding an agreement for the
24 disposition of culturally unidentifiable human
25 remains in the possession of Grand Canyon National

1 Park, and we have Steve Martin, Superintendent,
2 Grand Canyon National Park, and several others who
3 are ready to testify. With that, I'll turn it over
4 to you, Steve.

5 **REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT**
6 **FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE**
7 **HUMAN REMAINS IN THE POSSESSION OF GRAND CANYON**
8 **NATIONAL PARK, AZ**

9 **PRESENTATION**

10 **STEVE MARTIN**

11 STEVE MARTIN: Well, good morning and thank you
12 for having us here, and good morning to all of the
13 tribal officials, agency colleagues and the public
14 and others that are here today as well.

15 Again, my name is Steve Martin. I'm the
16 Superintendent of Grand Canyon National Park, and
17 I'm here today with Matthew Putesoy, Sr., Vice
18 Chairman, and Dianna Sue Uqualla, Councilwoman for
19 the Havasupai Tribe, and as well as Vincent Randall
20 of the Yavapai-Apache Nation. And I want to
21 personally and publically thank these respected
22 tribal government officials for working closely
23 with Grand Canyon National Park on this important
24 effort and to recognize them for their commitment
25 to the long collaborative process culminating in

1 this Review Committee request, as well as their
2 efforts in support of other Grand Canyon NAGPRA
3 compliance activities.

4 As Superintendent of Grand Canyon National
5 Park, I am here today with the support of these
6 officials to request a recommendation on the
7 proposed disposition of the remains of nine
8 culturally unidentifiable individuals. These
9 remains are in custody of Grand Canyon National
10 Park and we propose to repatriate them to the
11 Havasupai Tribe on behalf of all potentially
12 affiliated tribes. The proposed action is brought
13 before the Review Committee at the request of all
14 of the potentially affiliated and consulting
15 tribes. In your packet, you have a copy of the
16 request for repatriation from the Havasupai Tribe
17 and letters of support for the repatriation from
18 the other consulting tribes.

19 Unfortunately, we know very little about the
20 origins of the remains of these nine individuals.
21 In consultation with the tribes we determined that
22 these nine individuals are Prehistoric Native
23 American on the basis of nondestructive
24 examinations conducted in 1995 at the time the
25 initial NAGPRA inventory was developed and most

1 recently in 2008 when Kim Spurr, a forensic
2 anthropologist in Flagstaff, Arizona conducted a
3 subsequent evaluation. The determination is
4 further supported by the geographic context in
5 which the remains were found. No evidence
6 suggested that any of the human remains represented
7 individuals that lived in the Historic or recent
8 periods.

9 Although we have limited information about
10 where the remains were collected, we do know they
11 were collected from Federal land managed by the
12 National Park Service and historically occupied by
13 the Havasupai Tribe, the Hualapai Tribe, the San
14 Juan Southern Paiute Tribe, the Paiute Indian Tribe
15 of Utah, Kaibab Band of Paiute Indians, the Las
16 Vegas Band of Paiute Indians, Moapa Band of Paiute
17 Indians, Hopi Tribe, Navajo Nation, Yavapai-Apache
18 Nation and the Zuni Tribe. As such, all of these
19 tribes are considered to be potentially affiliated
20 and participated in the consultation process,
21 either in person or via telephone.

22 The consultations included one-on-one meetings
23 at tribal offices, field work on site at Grand
24 Canyon, and multi-tribe meetings. During the
25 consultation meetings, the National Park Service

1 staff and tribal representatives worked side-by-
2 side as they discussed the available evidence in
3 hopes of informing a specific cultural affiliation
4 determination for all of the Native American human
5 remains and associated funerary objects in the
6 custody of the park using the preponderance of
7 evidence threshold. None of these nine remains
8 have associated funerary objects. They were
9 collected over a period of years, mostly in the
10 early to mid-1900s from a number of nonspecific
11 locations in the park. Two of the remains were
12 collected from the vicinity of Grand Canyon Village
13 in 1935 but no other information is available. Two
14 others were collected from unknown cave locations
15 between 1954 and 1955. Another was collected prior
16 to 1958, but the location is unknown. One was
17 collected on a ledge south of the Bright Angel
18 Trail in 1962, but no other information is
19 available. Another from an unknown location was
20 collected prior to 1968. And lastly for two of the
21 remains we do not know the date or location of the
22 collection.

23 The lack of contextual information for the
24 human remains has led me, my staff, and the
25 consulting tribes to conclude that these remains

1 are culturally unidentifiable. We cannot establish
2 a relationship of shared group identity between the
3 remains and a specific present-day Indian tribe. A
4 detailed assessment of the human remains was made
5 by National Park Service, Grand Canyon National
6 Park, and professional staff in consultation with
7 representatives of the Hopi Tribe, Hualapai Tribe,
8 Kaibab Band of Paiute Indians, Moapa Band of Paiute
9 Indians, Navajo Nation, Paiute Indian Tribe of
10 Utah, and the Pueblo of Zuni. The Havasupai Tribe,
11 the Las Vegas Band of Paiute Indians, and the San
12 Juan Southern Paiute Tribe were contacted for
13 consultation purposes but were unable to attend the
14 meetings. There is no biological, archaeological,
15 linguistic, or other evidence to inform a specific
16 cultural affiliation determination. Thus, it is my
17 determination that these nine remains are
18 culturally unidentifiable. That determination is
19 supported by all of the consulting tribes,
20 including the tribal officials present here today.

21 While the regulations covering the disposition
22 of culturally unidentifiable Native American human
23 remains under NAGPRA have not yet been finalized,
24 the consulting tribes asked Grand Canyon National
25 Park to move forward with this request to

1 repatriate to the Havasupai Tribe so that the
2 remains can be returned to the earth as quickly as
3 possible. As such, I fully support the
4 repatriation request from the Havasupai Tribe and
5 find it to be rational and reasonable based on
6 information gathered through tribal consultation
7 and other evidence referenced in the forms
8 submitted to the Review Committee, including the
9 fact that the Havasupai Tribe is the only resident
10 tribe in the canyon. Again the proposed action is
11 brought before the Review Committee at the request
12 of the potentially affiliated tribes after years of
13 consultation.

14 Thank you for your thoughtful consideration of
15 our request. This proposed action is one of many
16 NAGPRA compliance activities that the tribes and
17 Grand Canyon have been working on. The NAGPRA
18 process for Grant Canyon includes years of
19 government-to-government consultation to develop a
20 memorandum of agreement to address inadvertent
21 discoveries in compliance with the law and in
22 consideration of unique cultural considerations of
23 each tribe. This agreement was finalized in 2006
24 and also incorporates mutually agreed-upon detailed
25 strategies to facilitate the next steps in the

1 NAGPRA inventory and summary process.

2 While the NAGPRA process for Grand Canyon Park
3 has been lengthy, I am pleased to report we are
4 making progress in all of these areas. I have
5 great respect for all of our government-to-
6 government relationships that we share with the
7 tribes and I'm pleased with our collective efforts.
8 And also now I would like to introduce the tribal
9 folks that are with me today, and I believe that
10 Matthew will - has some remarks.

11 DAN MONROE: Thank you.

12 **MATTHEW PUTESOY, SR.**

13 MATTHEW PUTESOY, SR.: Thank you, Steve Martin,
14 Review Committee. Thank you. Yes, we're from the
15 Grand Canyon. We traveled here yesterday, been a
16 long, long trip but we're glad to be here to
17 support Mr. Steve Martin, the Superintendent of the
18 Grand Canyon National Park to begin this
19 repatriation of the nine human remains.

20 We have been living in the Grand Canyon for
21 many, many years, thousands of years. We're the
22 only tribe still living in the canyon. The Hopi
23 Tribe know us as the *Cohonina*. That's Guardians of
24 the Grand Canyon, and we still have very, very
25 strong sacred ties to the canyon. Our aboriginal

1 homeland is located there in the park, and we're
2 glad that the park and the Forest Service are
3 willing to work with us to begin the government-to-
4 government relationship. And also due to that, you
5 know, we're known as the Havasupai Tribe, that
6 means - *Havasu 'Baaja*, in our language we say
7 *Havasu 'Baaja*. That means People of the Blue-Green
8 Water.

9 So we're very honored to be here to begin the
10 repatriation process for our ancestors, and we
11 would just like to request to the committee to
12 approve this request so we could get back to our -
13 burying our ancestors with ceremonies. It was
14 mentioned here by the earlier panel that things are
15 very, very sacred in our Indian way and that it's
16 hard to put in words how we feel, and it was
17 mentioned that the community suffers all together
18 when there's things like that that are not balanced
19 at all, you know, with human remains, sacred
20 objects being relocated and taken from our
21 ancestors. It creates a very unbalanced life for
22 us and we suffer, our communities, so if you can
23 honor our request and approve of this repatriation
24 process. Thank you.

25 I want to introduce Dianna Sue Uqualla. She's

1 a council member. Thank you again.

2 DAN MONROE: Thank you.

3 **DIANNA SUE UQUALLA**

4 DIANNA SUE UQUALLA: (Native American
5 language.) I say good morning to you, panel, and I
6 spoke words that said from my heart, my mind and my
7 spirit that you give us the privilege, the honor to
8 take these people home. In my upbringing, I am
9 what they call a traditionalist now in this day and
10 age. But I am just a Havasupai woman. I have been
11 taught through my family to be a traditionalist or
12 to know some of the things that are of the people,
13 the medicines, the different things we use. And it
14 is true, the panel before us did become very so
15 into depth, and I honor them for that reason
16 because it is out of things that we do as the
17 Native people to be honoring respectful to one's
18 request. And sometimes it is hard because it is a
19 ceremonial tool, and it is true that it's not
20 supposed to be touched by others, only from the
21 permission of that said person, the carrier.

22 Through that, I honor each and every one of
23 you that is sitting up on the panel, the Chairman
24 and the people that are assisting you. You have
25 quite a job in front of you to be able to recognize

1 these things that are of Native culture, of Native
2 people. This is why the nine remains that are
3 being brought back is truly a powerful thing you
4 must do. It is of our people, our ancestors. As
5 you see I am sitting here in my traditional garb,
6 but this is only the daywear where our ancestry
7 were dressed in buckskin, both men and women.

8 As I listened and I read, I understand that
9 the ones that were found in these cave-like
10 dwellings, the one that was laying on a ridge, I
11 would say, yes, they were Havasupai because that's
12 how our people had buried them in the ancient times
13 in those crevices. For that reason, I think they
14 did that because they believed and understood that
15 we are part of the Grand Canyon. We have our
16 native land, our traditional use lands is the
17 National Park. Our people have never brought up a
18 fight to say we want that back because for reasons
19 unknown we have let it be one of the most beautiful
20 places in Arizona that you could go and see
21 something so vast and yet you stand up on that
22 bluff or that plateau and realize how small a
23 person you are.

24 I realize these things as in August of this
25 year I was given the opportunity to travel through

1 the Grand Canyon in the river, the Colorado River.
2 From what my ancestry was from thousands of years
3 ago, that was our home. That was the place we
4 called home and this is where the medicines came
5 from. I remember as I first started going down and
6 things began to become visual in my eyes, not that
7 you would understand because I come from the
8 medicine world of what is visions and things that
9 the human people cannot see or recognize or be able
10 to comprehend.

11 But as I went down through those eight days,
12 every day was very awakening for me because I
13 realized that my grandfather who was a medicine man
14 that lived there was part of the – our people at
15 this little – we called Supai Camp. That was after
16 the modern-day people started to come in and bring
17 in Christianity and the works that were put out
18 there, you know, the building of the Grand Canyon.
19 But at that time he lived there, and as I was going
20 through the river I realized that all of my
21 ancestry from my medicine side of my family, from
22 my Havasupai side of my tradition and upbringing, I
23 realized that a lot of the Native people that had –
24 are living around there as Mr. Martin had stated
25 were all a part of this world. Each one had a time

1 that they came in to collect their medicines. Each
2 one was given the task of walking the grounds on
3 the plateaus to be able to gather the medicine up
4 there. And these were the Zunis, the Paiutes, the
5 Hopis, the Hualapais, the – all of the people that
6 live around the rim. And it was never written in
7 documents to say yes, this is the time you shall
8 use this sacred land to gather your medicines, to
9 gather what you need to help your communities in
10 what you do as ceremony.

11 When I realized this, you know, I went home
12 and acknowledged this to my council, and after
13 realizing without papers or words but to hear it
14 come through heart and mind through the spirit of
15 that water I also realized that it is the healing
16 for all of the people of this world, not just the
17 Havasupai people, not just the Hopis or Navajos or
18 Zunis. It is a healing for all of the people in
19 this world. This is why we – when I see people
20 stand up and look out that rim and be so amazed and
21 so at awe, and yet when you're in that river,
22 riding those rapids, you really realize how
23 powerful that canyon is to all of the people of
24 this world.

25 So this is why I think, you know, the

1 Havasupai people have given love, compassion,
2 honor, respect to all of the people that come to
3 visit our homeland at the Grand Canyon. We will
4 never, ever say that it's a national park. It's
5 our home, but we invite all the people of this
6 world, young and old, of not discriminating against
7 color or religion but they to be there to see this
8 awesomeness of what Spirit has created to make us
9 understand how powerful He can be.

10 So with that I give you much thanks and thank
11 you for honoring the people before us, because it
12 was very touching, because I do understand the
13 world of not being able to be tangible or touchable
14 or to know it's here in spirit, faith that we live
15 day to day. So thank you.

16 DAN MONROE: Thank you, Mr. Martin,
17 Mr. Putesoy, and Ms. Uqualla. Do you have any
18 further testimony? Very good.

19 Questions on the part of the committee?

20 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

21 SONYA ATALAY: I have a question. In the
22 letter from the tribal chairman, there's one
23 statement that says that they're hoping for
24 repatriation and reburial that will take place
25 within the boundaries of Grand Canyon National

1 Park. And I'm just wondering if that will be
2 possible within the park. I wasn't sure if that
3 was in your statement, but I wanted to ask that.

4 STEVE MARTIN: Yes.

5 SONYA ATALAY: Thank you.

6 DAN MONROE: Other questions.

7 MERVIN WRIGHT, JR.: I've got a question.

8 DAN MONROE: Yes.

9 MERVIN WRIGHT, JR.: With regard to the Park
10 Service, I guess, I mean this is just going to be a
11 recommendation with regard to the approval of this
12 agreement. I mean, does Mr. Martin have the
13 authority to execute this agreement and I'm certain
14 the tribes do have that authority, but does it just
15 go from that point and then they're allowed to
16 reclaim?

17 STEPHEN SIMPSON: Yes, Chairman Wright, you're
18 - this is the first one of these you've dealt with
19 on the committee, so the role of the committee here
20 is to make a recommendation to the Secretary as to
21 whether this agreement reached between the park and
22 the tribes can - should be approved. The Secretary
23 then has an independent authority to recommend, to
24 recommend or not, that this disposition take place,
25 and that that applies whether the entity is a

1 museum or a Federal agency, including Federal
2 agencies that are not under the jurisdiction of the
3 Secretary. So even the Defense Department, the
4 Secretary of the Interior would still need to
5 recommend that a disposition take place.

6 In this case, yes, the superintendent of the
7 park has the authority to enter into such an
8 agreement under the delegations in the National
9 Park Service, but that's how the process works.

10 DAN MONROE: Other questions or comments?

11 ROSITA WORL: Mr. Chair?

12 DAN MONROE: Yes.

13 ROSITA WORL: I think it's an exemplary model
14 that you've done. This is really great. You have
15 provided all of the information. I think it's
16 straightforward, and I'm almost ready to act.

17 DAN MONROE: Would you like to make a motion?

18 **REVIEW COMMITTEE MOTION**

19 ROSITA WORL: Yes, Mr. Chair. I would move
20 that the NAGPRA Review Committee recommend to the
21 Secretary the disposition of culturally
22 unidentifiable, nine human remains in the
23 possession of the Grand Canyon National Park to the
24 Havasupai Tribe.

25 DAN MONROE: Is there a second?

1 ERIC HEMENWAY: I second.

2 DAN MONROE: Moved and seconded. Any
3 discussion?

4 MERVIN WRIGHT, JR.: Yeah, I just would like to
5 say, you know, for the record that this issue of
6 culturally unidentifiable, you know, is not a term
7 that I know that we as Native people recognize, and
8 I appreciate your comments about the status of and
9 the location of where those remains came from. And
10 the acknowledgement at least on my behalf is not
11 one that concurs that this issue of culturally
12 unidentifiable is a term that I agree with. I've
13 been dealing with this issue for a long time and
14 it's just a -- it's just a situation that certainly
15 has not been brought on by the Native people and I
16 just wanted to state that, you know, for the record
17 that at least on my behalf it's not an
18 acknowledgement that this is a bona fide situation
19 or existence of reality.

20 DAN MONROE: Thank you.

21 Donna.

22 DONNA AUGUSTINE: Yes, I'd just like to add
23 that it's commendable that you take it upon
24 yourself to repatriate these remains and to offer
25 the ceremony to put them back into the earth. I

1 think a lot of times we don't have to feel or
2 directly - direct descendants or that shouldn't
3 have to be proven because as Native people we feel
4 an affinity to one another and when we say we are
5 all related at the end of our ceremonies, we really
6 believe that. So I commend you on that, and good
7 job.

8 DAN MONROE: Other questions or discussion?

9 ROSITA WORL: Question.

10 DAN MONROE: Call for the question. All in
11 favor signify by saying aye.

12 SONYA ATALAY: Aye.

13 DONNA AUGUSTINE: Aye.

14 ERIC HEMENWAY: Aye.

15 DAN MONROE: Aye.

16 ROSITA WORL: Aye.

17 MERVIN WRIGHT, JR.: Aye.

18 DAN MONROE: Opposed? Motion carries.

19 Thank you all very, very much for the hard
20 work you've done. And this is an exemplary case
21 and we very, very much appreciate it. Thank you.

22 STEVE MARTIN: Thank you.

23 MATTHEW PUTESKY, SR.: Thank you.

24 DONNA AUGUSTINE: I forgot to say thank you to
25 the first gentleman that spoke, Park Service,

1 right?

2 STEVE MARTIN: Yes.

3 DONNA AUGUSTINE: Thank you as well.

4 DAN MONROE: We next have a request for a
5 recommendation regarding an agreement for the
6 disposition of culturally unidentifiable human
7 remains in the possession of the Denver Museum of
8 Nature and Science. Could we have the
9 representatives of the Denver Museum please step
10 forward, and could you introduce yourself please.

11 **REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT**
12 **FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE**
13 **HUMAN REMAINS IN THE POSSESSION OF DENVER MUSEUM OF**
14 **NATURE AND SCIENCE, CO**
15 **PRESENTATION**
16 **CHIP COLWELL-CHANTHAPHONH**

17 CHIP COLWELL-CHANTHAPHONH: Good morning. My
18 name is Chip Colwell-Chanthaphonh, and I'm the
19 Curator of Anthropology and NAGPRA Officer at the
20 Denver Museum of Nature and Science. It's an honor
21 to be here before you today. Thank you for your
22 time. I'm sorry to say that unfortunately
23 Mr. Leigh Kuwanwisiwma of the Hopi Cultural
24 Preservation Office couldn't make it here, but
25 we've been working on this since last spring and

1 his not being here I hope isn't a sign of anything
2 other than his inability to escape his other
3 commitments.

4 So in the fall of 2007, the Denver Museum of
5 Nature and Science created a plan to proactively
6 address through consultation the future of all of
7 the Native American remains left in its collection.
8 The museum holds that it has an obligation to
9 listen to, honor and respect the beliefs and wishes
10 of the tribes that connect themselves to their
11 ancestral remains in museum collections.

12 In 2008, the museum received a National Park
13 Service NAGPRA grant to address the so-called
14 culturally unidentifiable Native American human
15 remains from the greater Rocky Mountain region in
16 its collection and began consulting with 82 tribes.
17 Today we present to you one of the first agreements
18 to come out of these consultations.

19 On May 7, 2009, a total of 15 tribes met to
20 consult on human remains representing 16
21 individuals removed from myriad locales around the
22 American Southwest. These consultations were held
23 using the museum's video conference technology,
24 which enabled tribal and museum representatives to
25 gather in three locations simultaneously: Phoenix,

1 Arizona; Santa Fe, New Mexico; and Denver,
2 Colorado. The museum consulted or attempted to
3 consult with another 28 tribes via email,
4 telephone, letters, and in person. From these
5 consultations an agreement was formed in which the
6 remains of 16 Native American individuals and their
7 associated funerary objects are repatriated to the
8 Hopi Tribe of Arizona, the Pueblo of Acoma, New
9 Mexico, the Pueblo of Zia, New Mexico, and the Zuni
10 Tribe of the Zuni Reservation, New Mexico. The
11 Hopi Tribe of Arizona will serve as the lead tribe.
12 In addition to the four tribes just mentioned, a
13 total of 17 tribes now have written formal letters
14 of support for this repatriation and no tribe has
15 objected to the proposed disposition agreement.

16 The Denver Museum of Nature and Science
17 therefore respectfully requests a recommendation
18 from the Review Committee that the museum move
19 forward with the proposed disposition of these 16
20 sets of human remains and their associated funerary
21 objects as described in the report submitted to
22 you. And I've just passed out the updated report
23 with the letters that we've received since we
24 submitted the draft disposition in July. If the
25 Review Committee recommends proceeding and the

1 Secretary of Interior concurs, disposition is
2 expected to take place as soon as possible
3 following the required public notification.

4 I'd like to publically thank all of the tribes
5 that have been involved in this for their patience
6 and their commitment to this very difficult issue,
7 and I'd like to thank the Review Committee for its
8 time and consideration. And of course I'd be happy
9 to answer any questions you might have. Thank you.

10 DAN MONROE: Thank you.

11 Questions? Yes.

12 **REVIEW COMMITTEE MOTION**

13 ROSITA WORL: Mr. Chair?

14 DAN MONROE: Yes.

15 ROSITA WORL: I would move that the NAGPRA
16 Review Committee recommend to the Secretary the
17 disposition of the 16 culturally unidentifiable
18 human remains in the possession of the Denver
19 Museum of Nature and Science to the Hopi Tribe of
20 Arizona, the Pueblo of Acoma, the Pueblo of Zia,
21 and the Zuni Tribe, and the Hopi Tribe, and those,
22 Mr. Chair.

23 DAN MONROE: Thank you. Is there a second?

24 SONYA ATALAY: I'll second it.

25 DAN MONROE: Been moved and seconded. Any

1 discussion? Call for the question. All those in
2 favor say aye.

3 SONYA ATALAY: Aye.

4 DONNA AUGUSTINE: Aye.

5 ERIC HEMENWAY: Aye.

6 DAN MONROE: Aye.

7 ROSITA WORL: Aye.

8 MERVIN WRIGHT, JR.: Aye.

9 DAN MONROE: Opposed? Motion carries.

10 Thank you very much, Chip, and thanks to all
11 who were involved in doing this work.

12 DONNA AUGUSTINE: Good for you. Good work.

13 ROSITA WORL: Mr. Chair.

14 DAN MONROE: Yes.

15 ROSITA WORL: I would just like to note for the
16 people who haven't seen all of the material, I mean
17 we are provided just with exceptional material that
18 demonstrates and supports our action. I know you
19 don't have it, but it's really – the consultation
20 is really very extensive, very applaudable. So
21 they're great.

22 DAN MONROE: Thanks.

23 DONNA AUGUSTINE: And could I just add
24 something? Okay. I just wanted to add that I've
25 been involved with NAGPRA since the – pretty well

1 since the law began, and before that spiritually
2 I've been involved since 1977 doing this type of
3 work in repatriation. And it makes me feel so good
4 to sit up here and to see museums and tribes
5 working together. It's like, yes. It's just
6 really nice and the healing that we had talked
7 about before, I think that's happening. Thank you.

8 DAN MONROE: Thank you. Yes.

9 SONYA ATALAY: My comment was just to commend
10 you on your efforts at working with so many
11 communities and consulting with so many
12 communities, it's quite impressive, as is this
13 chart that you provided about the consultation. I
14 found it really helpful. It was really, really
15 wonderful. Again this is something that the rest
16 of you may not be able to see, but just the way
17 that you documented the consultation was really
18 exemplary I thought. Thank you.

19 DAN MONROE: Thank you.

20 Next we have a request for a recommendation
21 regarding an agreement for the disposition of
22 culturally unidentifiable human remains in the
23 possession of the Grand Rapids Public Museum, and
24 what I would like to do is to listen to the
25 testimony, take any questions, and then we will

1 disperse for lunch and act on this matter after
2 lunch. So with that we have Marilyn Merdzinski,
3 who is the Director of Collections and
4 Preservation. Are you the lead?

5 MARILYN MERDZINSKI: Yes, I am. Thank you.

6 DAN MONROE: All right. Could we ask that
7 everyone introduce themselves before we begin the
8 testimony?

9 **REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT**
10 **FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE**
11 **HUMAN REMAINS IN THE POSSESSION OF THE GRAND RAPIDS**
12 **PUBLIC MUSEUM, MI**
13 **INTRODUCTIONS**

14 MARILYN MERDZINSKI: Certainly. Mr. Chairman,
15 my name is Marilyn Merdzinski, and I'm the Director
16 of Collection and Preservation at the Public Museum
17 in Grand Rapids, Michigan.

18 CHRIS CARRON: I'm Chris Carron. I'm Director
19 of Interpretation and Research with the Grand
20 Rapids Public Museum.

21 KEVIN DAUGHERTY: (Native American language.)
22 I'm Kevin Daugherty with the Pokagon Band of
23 Potawatomi Indians in Indiana and Michigan.

24 WINNAY WEMIGWASE: (Native American language.)
25 My name is Winnay Wemigwase, and I'm with the

1 Little Traverse Bay Bands of Odawa Indians in
2 Northern Michigan, and I'm also the Vice President
3 of MACPRA in Michigan.

4 SYDNEY MARTIN: (Native American language.) My
5 English name is Sydney Martin, and I'm a
6 representative of the Match-e-be-nash-she-wish
7 Tribe of Potawatomi Indians in Southwest Michigan.
8 We're a little tribe of only 398 members and we've
9 only been recognized federally for 10 years, but
10 our history is long. We have documents of a Chief
11 Match-e-be-nash-she-wish who was a treaty signer
12 with the Federal government in the 1700s, the late
13 1700s and the early 1800s, and that's why we've
14 chosen our name to help us in documenting that
15 struggle to get recognized by our Federal
16 government. I am from Hopkins, Michigan, and I am
17 very scared to be here today.

18 DAN MONROE: Thank you.

19 SUMMER COHEN: My name is Summer Cohen. I am
20 the MACPRA Chairperson or President, and I am also
21 representing the Keweenaw Bay Indian Community,
22 which is in the northern part of Upper Michigan and
23 I am the NAGPRA representative for them and the
24 Historic Preservation Officer.

25 DAN MONROE: Thank you. Marilyn.

1 **PRESENTATION**

2 **MARILYN MERDZINSKI**

3 MARILYN MERDZINSKI: Thank you, Mr. Chairman
4 and committee members. The six people that you
5 have before you today here represent the
6 Anishinabek Native American tribes in the state of
7 Michigan and the Public Museum in Grand Rapids,
8 Michigan. And we're here today to formally request
9 that you act upon the proposed disposition
10 agreement that you have before you for a group of
11 culturally unidentifiable human remains and
12 associated funerary objects from the state of
13 Michigan that the museum currently has in its
14 collections.

15 The Grand Rapids Public Museum is one of the
16 largest in the state of Michigan and actually one
17 of the oldest in the country, you know. We're
18 going back now celebrating our 155th year as a
19 museum. We're a general museum, which means our
20 collections are interdisciplinary. They cover all
21 categories of objects. The museum does have – you
22 know, is recognized in the museum community as
23 being one of the first museums in the country in
24 1971 to be accredited by the American Association
25 of Museums, and ever since then in all subsequent

1 accreditation reviews have passed with flying
2 colors and most recently just received our – might
3 be our sixth reaccreditation this past spring.

4 With resources that were provided to the
5 museum through a 2008 NAGPRA documentation grant
6 that we were able to get, the museum was really –
7 was able to make great strides in bringing its
8 NAGPRA compliance – being fully compliant with
9 NAGPRA and looking specifically to find a solution
10 for all of those unidentifiable remains from the
11 state of Michigan in our collection. So over the
12 past 14 months, the grant helped us thoroughly
13 review museum records and documentation, update
14 scholarly research, and increase consultation with
15 the Native American tribes. And what we've been
16 really happy about in this process is we've always
17 thought at the museum that we've had a good working
18 relationship with our Native American community.
19 And in our exhibits and programs, I think we
20 routinely have reached out and worked together
21 well. But when it came to our NAGPRA collections,
22 it was something that was set aside and not worked
23 on in quite the same collaborative manner. And I
24 think in the past 14 months, we've bridged that
25 gap, and I think we really have a lasting working

1 relationship with the community in Michigan.

2 So the work in this past 14 months did result
3 in us moving ahead with 7 outright affiliations
4 from that group of previously unidentifiable sites,
5 and also the disposition that you have before you
6 today of 22 sites that we feel are more likely than
7 not, to use the language of the law, that there is
8 an existing cultural relationship between the
9 people from these burials and the present-day
10 Anishinabee people.

11 So in the disposition you're going to see that
12 there are 104 individuals, 746 AFOs from 22
13 different sites throughout the Lower Peninsula of
14 Michigan. We worked to contact 20 federally
15 recognized tribes throughout Michigan, and also
16 some in Oklahoma, Wisconsin, Minnesota and Kansas.
17 And we have now 11 tribes that have joined as
18 parties to the agreement, 10 of them are in your
19 application or the wonderful template that you
20 provided for us to use to submit our request, and
21 we have an 11th tribe, the Grand River Band that
22 just joined us a couple days ago. And so a letter
23 – Kevin Daugherty, or not Kevin Daugherty but Kevin
24 Downs, our NAGPRA assistant, will pass that out to
25 you. So pass it on to my colleague Chris Carron.

1 DAN MONROE: Thank you.

2 **CHRIS CARRON**

3 CHRIS CARRON: Thanks, Marilyn. As Marilyn
4 mentioned we have worked already to complete
5 repatriation to specific Anishinabee tribes, those
6 human remains and AFOs that could be determined as
7 directly culturally affiliated. With that work
8 accomplished, the Public Museum has worked closely
9 with the representatives of the Anishinabee tribes
10 to bring this request to you for alternate
11 disposition.

12 So first we set about determining are these
13 human remains Native American? Nondestructive
14 forensic analysis was performed on all the human
15 remains in question. A determination of Native
16 American origin was made using the forensics in all
17 but a few of these remains where they were too
18 fragmented to make a clear positive assessment
19 based on forensics alone. For these, a Native
20 American designation was made through AFOs and
21 archaeological site context. Further determination
22 was made by research of our own museum records and
23 the records of those collectors who were the museum
24 sources for the human remains and AFOs. These
25 allowed us to determine in all the cases that are

1 before you today that they are more likely than not
2 to be Native American.

3 Since determination has been made that these
4 human remains and AFOs were culturally
5 unidentifiable to a specific tribe, we set out to
6 establish a cultural relationship through
7 consultation and consideration of oral history,
8 geography, cultural practices and all the sources
9 of information, both scientific and cultural, that
10 we could through consultation. We wanted to
11 establish cultural relationship between these
12 remains and the group of present-day tribes that
13 Marilyn has described already. We believe that, as
14 do our partners in this, there is sufficient
15 information to establish cultural relationship with
16 the group of tribes who are party to this
17 agreement.

18 And finally aboriginal land, aboriginal land
19 status was determined based on original tribal
20 occupancy from the Indian Claims Commission and
21 using Royce maps that document land inhabited and
22 ceded historically. All of the human remains and
23 AFOs in this request are from river valleys where
24 the tribes in this accord hold traditional land
25 claims.

1 And so based on the evidence before you,
2 forensic science, associated funerary objects,
3 contextual evidence, cultural relationship and
4 aboriginal land, we bring this accord and request
5 for disposition to you today. And now I'm going to
6 pass it along to Kevin Daugherty of the Pokagon
7 Band of Potawatomi.

8 **KEVIN DAUGHERTY**

9 KEVIN DAUGHERTY: Committee, thank you for
10 being here and hearing us today. This has been a
11 cooperative, collaborative process with the museum.
12 As Marilyn mentioned, the museum has worked with
13 the tribes over many years and is now working with
14 the tribes to address the NAGPRA issues. The
15 tribes in Michigan have formed an alliance to
16 address repatriation issues, the Michigan
17 Anishinabek Cultural Preservation and Repatriation
18 Alliance. All of the tribes in Michigan today are
19 Anishinabek, the related Ojibwe, Odawa and
20 Potawatomi peoples. And we worked to – the
21 alliance has worked to reach out not just to the
22 federally recognized tribes but also the
23 nonrecognized tribes as well. We work to be all
24 inclusive.

25 I know myself as a Potawatomi person, you

1 know, our oral histories link us with the migration
2 stories of the Ojibwe, but we also – at Pokagon
3 Band, we also have creation stories that have us
4 arising from the St. Joe River in the Indiana-
5 Michigan border area. So I know for myself that I
6 believe that all these remains that come out of
7 Michigan, Indiana, the Great Lakes that those are
8 my ancestors, and I have a responsibility to those
9 people as their descendant to take care of them and
10 take care of them in a good way. So with that, I'd
11 like to pass that on over to Winnay.

12 **WINNAY WEMIGWASE**

13 WINNAY WEMIGWASE: Hello again. (Native
14 American language.) As I stated previously, I am
15 from the Little Traverse Bay Bands of Odawa
16 Indians. I am also the Director of our Archives,
17 Records and Cultural Preservation Department, and
18 with that I have NAGPRA designee status with our
19 tribe and then I also serve as Vice President of
20 MACPRA, of the alliance that Kevin just spoke of.
21 So I'm here for a lot of different reasons.

22 But I wanted to share with you a story just
23 kind of like during this journey that's been going
24 on, you know, that we've been partnering with
25 Marilyn. And I don't think I've had a chance to

1 really thank her enough for all of her efforts and
2 the work and the persistence and the diligence.
3 She has spent a lot of her time reaching out to us
4 and making sure that we're all involved, and that
5 is something that usually doesn't happen very
6 often. So I just wanted to say *miigwetch* to her
7 and her staff for doing that for us.

8 But I traveled down here yesterday and I
9 called my mom last night to let her know I made it
10 to my room all right, and I wasn't going to go out
11 after dark and all of that stuff. And I have a
12 cold, I'm sick and came down here anyway, so she's
13 even more worried, wanted me to get on WebMD right
14 away, and I was like, I'm fine, Mom. I asked her
15 how my niece was though because we traveled
16 together last weekend to a powwow in Milwaukee, and
17 my niece is sick as well. And she said, oh well,
18 she is staying home from school but it ended up
19 working out because she is going to be staying with
20 your dad tomorrow and your aunt is bringing over
21 her wreath for her to make. And what she was
22 talking about was our wreaths or crowns that we
23 make every year that are attached to our Feast of
24 the Dead. We call them today our Ghost Suppers,
25 and I know that that feast was referenced in the

1 report that we submitted from Wesley Andrews, and
2 it was the March 27, 2009, the final report that he
3 submitted and it was actually on page 6 is when I
4 saw it.

5 So I said, oh she's going to work on her
6 wreath, and she said yes, she said, well, we had
7 all the other ones done but she has to get GiGi's
8 done. And GiGi is - well, she passed away. She
9 was stillborn. And I have five younger brothers
10 and Anna's dad is my - is the second oldest. I'm
11 actually the oldest person or oldest child in my
12 family. And I remember when we first went down to
13 the museum, traveled down there to tour the museum
14 and look at the remains that were there. And
15 again, I don't want to say anything to offend
16 Marilyn, but I was really taken aback because at
17 the museum we went up into the storage facility
18 where the items - or the remains were being stored
19 with items from the museum. And we walked in, it
20 was this huge room full of furniture of all
21 different kinds, and Grand Rapids has a rich
22 history in furniture trades and things like that.

23 So we went to the back, and there were shelves
24 and shelves and shelves of remains. And they were
25 in - most of them were in your typical bankers

1 boxes and all those horrible ways that they're, you
2 know, usually stored. But we went down to visit
3 with them and to rewrap them and try to show them
4 some respect and to let them know that we would be
5 back. So we sat down. Marilyn provided tables and
6 anything else that we needed to rewrap those
7 remains.

8 So we sat down and we started working through
9 them box by box, and one of the boxes that I opened
10 up – a lot of times when we've looked at remains in
11 different institutions, they will – sometimes the
12 way that they sort them out and store them doesn't
13 make sense to me, but a lot of this stuff I don't
14 think makes sense to me. But anyway, in one of the
15 boxes there was a Quaker Oats container and I
16 thought, okay, I wonder what's in here, so I opened
17 it up and it was someone's baby. And it didn't
18 bother me right then, you know, I just kind of –
19 you have to kind of remove yourself for a moment,
20 and we finished the job that we had there and we
21 even drove home and it didn't bother me. But when
22 I got home, it was probably three or four days
23 afterwards and I was still really sad about it.
24 And what happened to me was that when I got home,
25 thinking about that baby and about that family that

1 buried that baby, my mind immediately flashed to
2 that day that we buried my niece. You know, my
3 brother and my sister-in-law were really looking
4 forward to having her with them, and you know, they
5 were in their early twenties when this happened to
6 them and they still have a little bit of a hard
7 time talking about it. It was only a few years
8 ago. And I remember standing at the cemetery and
9 watching my brother stand there with his - with my
10 sister-in-law and my little niece who is now eight,
11 and the pain that they had. I haven't, you know,
12 had any children myself, but I'm really attached to
13 my niece and my little cousins. And I myself, it
14 makes me sad but there's no way that I could ever
15 truly know what that feels like. But I remember my
16 uncle standing next to me and my brother was
17 standing there with his little family and there was
18 that hole there and that's where they were putting
19 her. And my uncle said, you know, your brother did
20 a lot of growing up today. And I was hard for me
21 as his big sister to watch him hurt like that.

22 And so when I got home and I had that flash in
23 my mind, it really hit home for me. And I'm really
24 - again, really grateful to Marilyn for really
25 working so hard and applying for that grant, which

1 helped get me here, because our tribe is having,
2 like everyone else, a lot of hard times with our
3 budgets. But it started me thinking about all of
4 that again last night when my mom said that Anna
5 was going to make the wreath, because what she
6 meant was we make crepe paper wreaths and those are
7 invitations to our ancestors to come to the feast,
8 you know, they're invites to the party, basically.
9 And my little niece who is eight makes her baby
10 sister's every year out of these little - you know,
11 it's crepe paper and she makes these little pompom
12 flowers and takes a lot of time to wrap it and make
13 it really pretty and then we take them out around
14 Halloween, about this time, and we hang them up.
15 And they look like wreaths when they're hung on the
16 crosses, but then the way we believe is that the
17 spirits come and take them. And because this time
18 of the year is so rainy in our area that the rain
19 will wash the color out of those wreaths and then
20 we know that they've accepted them and that they're
21 going to come and visit with us.

22 And our feast actually is in two weeks, and
23 thinking about these remains that have been sitting
24 in this museum it's kind of like they're being left
25 out, because for so long we haven't been able to

1 include them in that ceremony because a lot of
2 people didn't even — you know, they don't even know
3 that they're there. And even though, you know, all
4 of us, we didn't have anything to do with how they
5 got there, you know, Marilyn and her staff have
6 inherited that collection. And we as contemporary
7 people now didn't have anything to do with them
8 being removed, we do know that they're there and
9 they're our relatives and we have a responsibility
10 to make sure that they get home. And until they're
11 allowed to come home and we can give them that
12 respect that they deserve, our lives won't be as
13 rich as they can be.

14 So I think that's all I wanted to say and I
15 wasn't planning on getting this emotional about it,
16 but I want to thank you for your time and the work
17 that you all do. And I really actually enjoy
18 sitting and listening to the other things that are
19 being presented and how you all react to those and
20 what you have to say, because it's difficult to try
21 to find a balance between policies and paperwork
22 and regulations and then all of this spiritual
23 stuff that's so important to us, to try to find
24 that balance and I have a lot of respect for the
25 job that you have. *Miigwetch*. Thank you.

1 DAN MONROE: Thank you.

2 **SUMMER COHEN**

3 SUMMER COHEN: (Native American language.)

4 Again my name is Summer. I'm the President for
5 MACPRA, and I was actually supposed to speak first,
6 but I'm glad that I was able to listen to Kevin and
7 Winnay because it's — you know, I've had all these
8 thoughts trying to figure out what I was going to
9 say but I didn't know how to say it. And we have
10 oral histories about our migration, you know, Kevin
11 had spoke about that. But there's actually older
12 stories that go back before the migration and where
13 we originated from and where the migration is
14 actually coming home. So you know, all those
15 unidentified remains are — you know, they're in a
16 place that we were when we — you know, where we
17 originated.

18 And then Winnay spoke of the Feast of the
19 Dead, and that's — well, first of all, we are all
20 different — we're labeled as different tribes right
21 now. I'm Ojibwe. We have Potawatomi and Odawa
22 represented here, but in reality we are all
23 Anishinabee, and I was thinking about how some of
24 the remains are labeled as Hopewell and I know that
25 that's not the name of the tribe or the people, and

1 it was Chris who told me that it was the name of a
2 farmer who owned the property, and just thinking
3 about those people, these ancestors walking up to
4 each other saying are you a Hopewell tribe? We
5 didn't label each other like that. We are all
6 Anishinabee. We are all related. They are our
7 ancestors, and so you know, there's a point to be
8 made there that when scientists label these remains
9 that are from I guess Historic or Prehistoric, that
10 label kind of makes you think of them as a separate
11 group of people, when really they are not. That's
12 like the Paleo-Indians, you know, that's not what
13 they were called. That's not their name.

14 So anyways, the other thing I wanted to talk
15 about was how Winnay was talking about the Feast of
16 the Dead, my office is on Sand Point, which is on
17 the southern shore of Lake Superior, and all around
18 my office are mounds. They used to have remains in
19 them, of our ancestors. And they were — I had
20 thought that that was the way that they had got
21 there, through the Feast of the Dead, they were
22 placed there in their family mounds. And not too
23 long ago, I met this woman who is an archaeologist
24 who works in Wisconsin. She was working for the
25 Lac Courte Oreilles Band, who is also Ojibwe or

1 Anishinabee, and we were trying to document an old
2 village site that had been flooded by a power
3 company. And once they started doing that they
4 started finding mounds next to the village site
5 there also. And so those mounds, just as described
6 in those reports, they did exist all over and
7 within the Anishinabee historic areas where they
8 lived. So thank you for listening. *Miigwetch*.

9 DAN MONROE: Thank you.

10 **SYDNEY MARTIN**

11 SYDNEY MARTIN: Good day again. Again my name
12 is Sydney Martin and I neglected to tell you that
13 I'm the MACPRA representative for our tribe, and my
14 term is for two years. And during that time I've
15 never been approached or anyone in our tribe and
16 administration or whatever has been approached by
17 anyone to – even though I've been involved with
18 NAGPRA, no one has approached us to see if we would
19 like to be a part of a repatriation, until the
20 Grand Rapids Museum approached our tribe to ask if
21 we would like to do that. And of course I have
22 been repatriating ancestors since the '60s. I was
23 doing that with a group of Medawin people from
24 throughout Michigan. At that time we weren't
25 supposed to meet because we were considered outlaw

1 religion and we could be arrested for practicing
2 the things that we did, sort of like the Salem
3 witches a long time ago. We were evil and bad and
4 it was not good for America to do these things.
5 But we still kept our old ways going, and all of
6 our people, Anishinabee people did that in
7 locations wherever we were at.

8 And I come from a family of traditional
9 people, so we knew that when we had people given to
10 us, ancestors, by somebody for instance on the Lake
11 Michigan shoreline in Saugatuck, maybe some cottage
12 owner found some remains in a sand dune. And since
13 they had them in their house, they've been having
14 bad things happen to them. They've been seeing
15 things. They've been getting chills and
16 unexplained events were happening to them, and they
17 finally put two and two together and would say,
18 well, maybe it's those bones might be Indian. And
19 so in that way, they would contact us, right
20 locally, to get them out and to take them. So in
21 that way is how we were repatriating from the '60s,
22 I remember in '61 was the earliest one. And we did
23 that without the help of any tribe or museum or
24 Federal government or state government. We did it
25 in secret. And I believe I was doing probably - my

1 family and I, probably two or three a year doing it
2 that way.

3 So when our little tribe became federally
4 recognized and we were finally able to be – I was
5 able to volunteer to be on the NAGPRA committee,
6 MACPRA committee as we call it, and Marilyn – up
7 until that point it had been kind of – a lot of
8 animosity was going on with the City of Grand
9 Rapids with our tribe because the billionaires in
10 that town had tried to stop us from becoming
11 federally recognized and they did that for years
12 and years and years. They weren't – these people
13 are not government entities. They're private
14 business people.

15 So when Marilyn was so open, and the Grand
16 Rapids Public Museum and their staff, about helping
17 us with their collection, it was just a miracle.
18 It was – I couldn't believe it. And of course, you
19 know, I was beyond words, because I know that those
20 remains are Anishinabee. I know that. I don't
21 care if people want to label them prepaleolithic
22 cavemen, Hopewells, whatever, those are Anishinabee
23 ancestors.

24 To bring a little levity to this, something
25 crossed my mind about – I'd like to quote a

1 comedian about if it walks like a duck and it
2 quacks like a duck, it must be a duck. That's
3 exactly how it is with these remains. They're
4 found in Michigan. We're in Michigan. We've
5 always been there from the Creation, from the dawn
6 of Creation. We were placed here in Michigan or in
7 Wisconsin or in the Upper Peninsula or in Southern
8 Canada. Anishinabee people were placed there by
9 Creator, and with all of my heart and my soul and
10 my spirit, I know this.

11 So when the Grand Rapids Public Museum was so
12 open and helpful in helping us to get here to tell
13 you this is the first time that it's been good.
14 And with the City of Grand Rapids - I must say too
15 that that bunch that tried to stop us from getting
16 federally recognized, those billionaires, they lost
17 in the United States Supreme Court. They took our
18 - they took us all the way there and with the help
19 of the United States Government of course helping
20 us, we prevailed. And we took down somebody named
21 Jack Abramoff on the way there. I don't know if
22 you guys might know of Jack Abramoff, but he was
23 one of those people that are totally evil, corrupt,
24 bad, and these are the kind of people that we were
25 used to dealing with from our little Grand Rapids -

1 my tribe is only 25 miles south of Grand Rapids, so
2 that's why I was so aghast and happy when the Grand
3 Rapids Public Museum said we're working to
4 repatriate what we have. Would you like to join
5 us? Thank you, committee.

6 DAN MONROE: Thank you for your testimony.
7 Thanks to each of you. We will take a lunch break
8 and rejoin.

9 DAVID TARLER: If we may rejoin at 1:15 please.

10 DAN MONROE: Right. That's what I was going to
11 say actually. Rejoin at 1:15, and if you can be
12 seated again so we can ask questions we'll resume
13 at that point. Thank you all very much.

14 **LUNCH**

15 DAN MONROE: We will resume consideration of
16 the request for a recommendation regarding an
17 agreement for the disposition of culturally
18 unidentified human remains in the possession of the
19 Grand Rapids Public Museum, and we have had an
20 opportunity to hear the testimony. Let's open it
21 to the committee to ask questions of any of those
22 who have testified.

23 Yes, Eric.

24 **REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT**
25 **FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE**

HUMAN REMAINS IN THE POSSESSION OF THE GRAND RAPIDS
PUBLIC MUSEUM, MI - CONTINUED
REVIEW COMMITTEE QUESTIONS AND DISCUSSION

ERIC HEMENWAY: I'd like to comment that I have to recuse myself from commenting on this disposition.

DAN MONROE: Okay.

SONYA ATALAY: I also need to recuse myself from this disposition.

DAN MONROE: All right.

ROSITA WORL: I have a legal question.

DAN MONROE: Go ahead, Rosita.

ROSITA WORL: Mr. Chair, I note that this last letter, the 11th letter is coming from a tribe that is not federally recognized at this time. Is that an issue? Could we still include them in our recommendation?

CARLA MATTIX: We have included - where there are federally recognized tribes involved, we've included the nonfederally recognized tribes as well in that entire group.

ROSITA WORL: Thank you.

DAN MONROE: Is the committee ready to act on this?

ROSITA WORL: Yes, Mr. Chair.

1 DAN MONROE: Rosita.

2 **REVIEW COMMITTEE MOTION**

3 ROSITA WORL: I would move that the NAGPRA
4 committee recommend to the Secretary of the
5 Interior the disposition of a group of culturally
6 unidentifiable human remains and associated and
7 unassociated funerary objects that are identified
8 in the report and that's in the possession of the
9 Grand Rapids Public Museum to the 11 tribal groups
10 that are listed in the report.

11 DAN MONROE: Thank you. Is there a second?

12 MERVIN WRIGHT, JR.: I second it.

13 DAN MONROE: Motion has been moved and
14 seconded, call for the question.

15 ROSITA WORL: Question.

16 DAN MONROE: All in favor?

17 DONNA AUGUSTINE: Aye.

18 DAN MONROE: Aye.

19 ROSITA WORL: Aye.

20 MERVIN WRIGHT, JR.: Aye.

21 DAN MONROE: Motion carries. Thank you very
22 much for your testimony and for the hard work
23 involved in bringing this to us. We very much
24 appreciate it.

25 MERVIN WRIGHT, JR.: Mr. Chairman?

1 DAN MONROE: Yes.

2 MERVIN WRIGHT, JR.: I just would like to make
3 a comment, you know, reading the analysis that was
4 conducted to determine the Native status, you know,
5 I mean that's - you know, really the conclusion
6 there, but I think with regard to the statute and
7 the regulation, this is where I believe the
8 government has that requirement to follow the
9 status of the federally recognized tribe, and
10 although that - there are Natives across the
11 country who may not be enrolled but could be lineal
12 descendants, this is one of the hang-ups with
13 regard to the statute and I guess the restriction
14 or limitation that could exist in trying to
15 implement and complete this purpose of
16 repatriation.

17 DAN MONROE: Thank you. Any other comments?

18 SONYA ATALAY: I do have a quick comment.

19 DAN MONROE: Yes.

20 SONYA ATALAY: Which is just to say although I
21 needed to recuse myself from voting on the case, I
22 wanted to say that I thought that it was a
23 particularly well-documented and researched case.
24 So I wanted to just acknowledge you for that, and
25 particularly Wes Andrew's report and his thoughts

1 on cultural affiliation within the report. And
2 drawing attention to Anishinabee concepts of
3 kinship and what cultural affiliation means I think
4 are really ahead of the game in many ways and
5 forward thinking and what I hope that we can work
6 to see further of on this committee. So thank you
7 very much for that work.

8 CHRIS CARRON: Thank you. We'll pass those
9 comments on to Wes. We very much agree.

10 DAN MONROE: Thank you once again.

11 Now we will turn to a request for a
12 recommendation regarding an agreement for the
13 disposition of culturally unidentifiable human
14 remains in the possession of the Georgia Department
15 of Transportation, and do we have Mr. Eric Duff?

16 DAVID TARLER: We do. We have him
17 telephonically.

18 DAN MONROE: Very good.

19 DAVID TARLER: Mr. Chairman, we have
20 encountered a technical difficulty, and I think
21 that we should move onto another item on the agenda
22 until such time as Mr. Duff can hear us and we can
23 hear him.

24 DAN MONROE: All right. That would be helpful.
25 Sherry, can you – can you proceed with the

1 National NAGPRA Program Manager's end of the year
2 report, if you would.

3 SHERRY HUTT: Certainly, I will.

4 DAN MONROE: Thank you.

5 **NATIONAL NAGPRA PROGRAM END-OF-YEAR REPORT ON THE**
6 **IMPLEMENTATION OF NAGPRA (FY 2009)**

7 **SHERRY HUTT**

8 SHERRY HUTT: Good afternoon to all of you, and
9 I was delighted that we had a full complement of
10 Review Committee members, appointees, for this
11 meeting. And I'll comment on the process in a
12 moment, but welcome to all of you and some of the
13 things that I will comment on today will be new
14 things, and some I am sort of recapping for the
15 benefit of those of you who have not been to a
16 Review Committee meeting before or who have been
17 but not have covered these issues.

18 And at this point on the agenda is when we
19 sort of look at the end of the year for the
20 National NAGPRA Program, because as part of your
21 duties, you look at what we do. You may have
22 comments on things you'd like to see, research you
23 might like us to conduct for your benefit.
24 Basically we throw those into the category of
25 homework assignments, and so I'd like to just start

1 off with some recapping of the accomplishments of
2 the year, and I'm going to turn it over in a moment
3 to Sangita Chari, who you may have met, who wears,
4 as all the NAGPRA staff do, a number of hats, one
5 of them being grants coordinator and also working
6 on all of the training and a few other items,
7 including NAGPRA at 20, which I will let her
8 explain to you. But let me recap sort of the year
9 in NAGPRA if I might.

10 **NOTICES**

11 SHERRY HUTT: First of all, notices. Notice
12 publication is a barometer of the activity by
13 museums and Federal agencies to consult with
14 tribes. The culminating event of inventories and
15 summaries, all those compliance documents and
16 consulting with tribes and perhaps grants
17 activities, results in a notice. And if it's human
18 remains, it's a Notice of Inventory Completion that
19 is the predicate to repatriation. If it is an
20 agreement on items, it's a Notice of Intent to
21 Repatriate.

22 I thought a few years ago that if we could get
23 up to publishing a hundred notices a year that
24 would be a good thing. Last year we published 180
25 notices, this year 200 notices. And the only time

1 in the past that the National NAGPRA Program has
2 come close to that was a number of years ago when
3 Congress gave some extra money and there were like
4 six people working on notices. We have a notice
5 department of one person, Jaime Lavallee. She is
6 assisted by the rest of the team in proofreading
7 notices and all, but basically works with all of
8 the museums and Federal agencies to pull these
9 notices together. And importantly she checks them
10 against the inventories because at some point very
11 soon we want to be able to go back through all the
12 inventories and be able to report to you that all
13 the human remains in an inventory that have been
14 culturally affiliated are represented in a notice.
15 And to the extent they're not, that's a homework
16 assignment for the museum or the Federal agency.
17 We'd like to be able to give periodic reports on
18 that and list to you the museums or Federal
19 agencies that have homework assignments. That's
20 only a piece of the story but that's a piece that
21 we can pull off and say in that way we facilitate
22 the process.

23 So 200 notices is a huge amount of work that -
24 I mean, we publish the notices but let's remember
25 what it reflects. And it reflects the work of all

1 the Federal agencies and museums that have
2 consulted with tribes because you don't get to this
3 point if you haven't done consultation. So that's
4 I think exciting news.

5 **GRANTS**

6 SHERRY HUTT: Grants, and I'll just touch on
7 this briefly and Sangita will go into the report
8 that you have, but the requests were up 100 percent
9 over last year, both the number of requests for
10 grants and the amount requested, 100 percent; 4.5
11 million was requested and twice as many grant
12 requests — the amount given was 1.85. And I would
13 — but I would say that the reason you had 100
14 percent increase in grant requests from '08 to '09
15 is the efforts of Sangita Chari because what she
16 did was she took all the unsuccessful grant
17 recipients last year and called them and talked to
18 them and wrote letters to them and invited them to
19 call upon her to help them. And a number of them
20 took her aid, sent in provisional grant packages in
21 December so that she could work with them.

22 We were neutrals in this. Sangita and I staff
23 the grants panel. We do not make the decision.
24 And it is the program's perspective that we want
25 everybody to put in a good package and then have

1 the grants panel prioritize them as the grants
2 panel sees – as they choose to do so. But because
3 of all of those person-to-person – and there's no
4 other way to do it, but individual one-by-one
5 effort. And Sangita is responsible for those
6 efforts that have resulted in 100 percent increase
7 in requests.

8 **DATABASE AND WEBSITE**

9 SHERRY HUTT: We also had Mariah Soriano, who
10 is a program of one, doing the databases and the
11 web. As you heard before, we had from 2008 in a
12 year when we had very few grant requests and there
13 was money left on the table by the grants panel.
14 We used some of that money for training and some of
15 that to pump up the IT so that we could better
16 communicate with people and create the databases
17 that would inform research. So Mariah is working
18 on that and very soon we will have released the
19 database of culturally affiliated inventory.

20 So we have a database of all of the
21 individuals listed as culturally unidentifiable,
22 but you will be able to soon cross-reference that
23 to the inventories of culturally affiliated. What
24 we found when we were putting that database up and
25 entering the data is that there was a large chunk

1 of data from '96 to 2000 that was never entered in
2 electronically. So we are going back through the
3 paper files, about 1,000 records, 1,000 files to
4 individually put on the electronic database that
5 data.

6 So we will open up the culturally affiliated
7 database before it's fully populated just to give
8 people the sense of what's up there and what's
9 coming and then we'll fully populate it over the
10 ensuing months. Once that database is fully
11 populated, we'll be able to run reports and tell
12 you how many human remains have been identified as
13 culturally affiliated but are not represented in a
14 notice. You'll also be able to look at the
15 individuals that have been culturally - who have
16 been culturally affiliated and compare them to
17 individuals by institution that have been indicated
18 to be culturally unidentifiable that may be from
19 the same site, so it may help inform. I mean, we
20 have museums that contact the office that say this
21 is great. I'm using this information - we have a
22 very small staff and we're using this information
23 for museums who have larger staff to help inform
24 who we should be consulting with, how we should be
25 working through this and amending their inventories

1 from unidentified to culturally affiliated.

2 **TRAINING**

3 SHERRY HUTT: Training, I will tell you that
4 the training numbers were down this year over last
5 year, and in part that's due to the National NAGPRA
6 team not going out on travel for training as much.
7 But we have been working on the videos. Those of
8 you at the last Review Committee meeting saw the
9 video on civil penalties, and tonight at the close
10 of the meeting today, you'll see the video on
11 grants and notices. And you won't see the whole
12 thing because we're still resolving some of the
13 releases, particularly for Federal agency people
14 who appear on those videos. So we've condensed
15 them to one preview tape, to that you can see
16 these. But we have - Sangita has worked on these a
17 great deal and Lauren Trice who worked with her on
18 the report. We also have a woman who is a graduate
19 student at George Washington University's Museum
20 Studies Program, and she is getting course credit
21 for working with us and she is archiving all the
22 interview tapes and indexing them so that we can
23 better access all of the tapes in putting together
24 new videos. So we have all of these people helping
25 us to put together the videos and we are working to

1 get all of those out.

2 **CIVIL PENALTIES**

3 SHERRY HUTT: I will comment that only one
4 large civil penalty matter was investigated this
5 year, and the number of counts is still under the
6 review with the Assistant Secretary. That would be
7 a correct statement. But – and I'm not going to
8 comment on the substance of that investigation, but
9 it involves a museum taking the lead for a number
10 of museums creating frustration over the years for
11 a number of tribes. And so the quality of the
12 investigation and the sort of the frustration level
13 that is built that will be resolved hopefully by
14 the civil penalty, I think, is worth the amount of
15 time that's gone into it.

16 And for those of you too who are fairly new on
17 the Review Committee, civil penalties are the way
18 in which people who have grievances – or not
19 grievances, but feel that museums have not
20 complied, there's a template on the website to make
21 an allegation of failure to comply and then a law
22 enforcement agent, who works with David Tarler when
23 he is wearing his hat as civil penalties
24 coordinator instead of DFO to the Review Committee,
25 they work through these and they communicate with

1 the museum.

2 And it's interesting when we talk to the
3 Assistant Secretary and the Assistant Secretary is
4 signing, let's say, a penalty letter issuing a
5 penalty against a museum and we've worked with
6 several different assistant secretaries and they
7 all asked the same question, is this museum going
8 to know this is coming? It's not a pleasant thing
9 to issue a penalty, but they understand that
10 compliance is important. And when we tell them
11 that the museum not only knows it's coming but is
12 probably ready to pay the penalty in return mail,
13 they're somewhat surprised. And then we report
14 back that we do receive these penalty checks in
15 return mail.

16 And the point is that the way we look at civil
17 penalties is not to dun a museum or to punish a
18 museum, but as a method of opening the dialogue and
19 bringing the museum into compliance. So if at the
20 beginning of a civil penalty investigation of the
21 museum they're not — they haven't failed to comply
22 in some ways, by the end of the investigation they
23 have come into compliance. That's what we consider
24 success, bringing people who have been slow to the
25 table to be in compliance.

1 So then the amount of the penalty is going to
2 be mitigated, because if you come into compliance,
3 that's one of the ways you might reduce the
4 penalty. Working with tribes is another way to
5 reduce the penalty. So if the amount of the
6 penalty is reduced to basic amounts, we consider
7 that just fine. The penalties go to the general
8 fund. They don't go to the tribes. But the key is
9 that the museums that have been through the civil
10 penalty process have been coming into compliance.
11 And it's - and it's been a good relationship-
12 building experience as opposed to an adversarial
13 one.

14 We had one civil penalty where a penalty was
15 issued and the museum chose to take it formally all
16 the way to a formal hearing. And that hearing was
17 set for November 16, and it settled in September
18 and the museum paid the assessment, paid the - paid
19 the assessed amount, and the case is resolved. And
20 so again, it's a matter of working with museums to
21 increase their understanding. So we think that's
22 how Congress intended the law was to, you know, if
23 you weren't complying of your own volition and
24 there was some lack of understanding, we would
25 bring you into understanding. And that appears to

1 be the way that things are working out.

2 **REGULATIONS**

3 SHERRY HUTT: On the regulations, two things to
4 report on the advance of regulations. One is
5 regulation, the reserve section 10.7, which is what
6 to do with unclaimed on the Federal lands, Indian
7 lands, what we have done is we have a working group
8 self-nominated from various Federal agencies, to
9 work with our office. And then we hired a
10 contractor Patricia Zell, who may be known to some
11 of you, and they've actually – and they've been
12 working on this over the last year. And one of the
13 items on your agenda will be to look at their work
14 and to – for me to be able to take back to them
15 some recommendations. But key here is that we're
16 working with a group that we've been very open –
17 it's a team process. We haven't had a lot of
18 complaints or comments from tribes and generally
19 comments on how things are going on the Federal
20 land. And we suspect that's because a number of
21 agencies are using best practices to work with
22 tribes. So we're trying to bottle those best
23 practices and make this rule sort of a best-
24 practice guidance and working with a team to do so.

25 The other rule, the long-awaited culturally

1 unidentifiable human remains, the disposition rule,
2 10.11, at the close of the fiscal year, that rule
3 left the Department of the Interior and is
4 currently over at the Office of Management and
5 Budget. And so they will review it in the coming
6 month or so, and absent any changes or sending it
7 back to the Department, it will go on to be
8 published.

9 Now the rule-making process does not allow us
10 to discuss with you the ways in which the final
11 rule differs from the proposed rule. There were
12 some consistent comments, problems that were noted
13 in the proposed rule, and I can tell you that all
14 of those issues – there were some that were
15 consistently raised by museums across the board.
16 And all of those were heavily weighted into the
17 rule – I think I can say that much. My attorneys
18 are looking at me.

19 You're looking at the two people here, Carla
20 and Stephen, who worked on that rule and wrote the
21 preamble. So not only do you – the rule that you
22 will see is pared down – is that safe to say since
23 I've just now said it – pared down from the
24 proposed rule, but yet gets us to the essence of
25 what we want to accomplish without being unduly

1 costing – creating any undue cost items for
2 museums.

3 And the other thing about this rule is that
4 there were 153 responses from tribes, museums,
5 individuals, science organizations, and different
6 comments were made by each of them. All of those
7 comments are responded to in this rule. There are
8 a number of legal issues that have been nagging us
9 along the way, and people raise those legal issues
10 in commenting on this rule. And Carla and Stephen
11 wrote responses that have now been vetted all the
12 way through the Department and counsel all the way
13 through and now over at OMB, so that when that rule
14 is published, the preamble, a hundred pages of
15 legal discourse on NAGPRA. So you have not only
16 the rule, which I think will be helpful to us, but
17 also a number of questions that will be answered
18 for all of us in an official statement, and I'm
19 truly looking forward to having that out there,
20 having read that hundred pages a number of times, I
21 think it's beautifully written and will be of
22 immense help to all the NAGPRA constituents.

23 And to let you know how the rule was reviewed,
24 there's a consultative relationship on NAGPRA
25 between the Assistant Secretary in Indian Affairs

1 and Fish and Wildlife in the Parks. And so the two
2 assistant secretaries conferred on this, and
3 Mr. Echo Hawk gave us a considerable amount of time
4 in Indian Affairs, and his staff who many of them
5 have now read this 110 pages. And when you think
6 of how busy these people are that they took so much
7 time to devote to this, there is truly an interest
8 in the Department for NAGPRA and that NAGPRA
9 succeed. The Fish and – the Assistant Secretary
10 for Fish and Wildlife and Parks, Mr. Strickland and
11 his Chief Deputy Mr. Shafroth also took a
12 considerable amount of time. So it took us a while
13 to work through the new administration. This is
14 one of the first regs I think that they worked with
15 in the new administration, so there was both a
16 process and a substance piece here, and you may now
17 know that all of the hierarchy of the Interior is
18 well-versed in NAGPRA. So it has been a time-
19 consuming matter but certainly a worthwhile one.
20 And we're very pleased that that rule is over at
21 OMB.

22 **GOVERNMENT ACCOUNTABILITY OFFICE STUDY UPDATE**

23 SHERRY HUTT: Other program activity, very
24 quickly, there are people here from the Government
25 Accountability Office, and there is a study, as we

1 have told you before, that the GAO has — is well
2 into the study of the National NAGPRA Program and
3 Federal agency compliance. And we are pleased when
4 they ask us for information and we hope we have
5 complied fully and will continue to comply fully
6 and quickly.

7 **INTERNSHIP PROGRAM**

8 SHERRY HUTT: And I also want to comment when I
9 think of other things. The Program, the National
10 NAGPRA Program has a number of interns. There's so
11 many people in college who are unable to find full-
12 time jobs, a number of college students and
13 graduate students. And we have been so pleased to
14 have a number of interns working in our program.
15 Some of them we're able to pay modest amounts.
16 Others get course credit. Some have come to us
17 just for the experience. And it enables us to do a
18 lot. It enables us to do research and work with
19 them, and in return give them a working experience
20 on their resume, and these people have been
21 phenomenal.

22 And we have had Native students working with
23 us. And I want to say because it has been
24 commented that the National NAGPRA Program is not
25 culturally diverse, and it has been my concern

1 since coming to the program five years ago. Each
2 time there has been an opening for a position, I
3 have personally recruited heavily in Native
4 communities, tribal communities. I go to NCAI.
5 I'm at -- if anybody here who has been pressed by me
6 to apply for a position can attest to this, go to
7 NATHPO and to USET, and there's no shortage of
8 talent out there. Coming to DC is not necessarily
9 something that a lot of people like to do but we
10 recruit heavily, and also in the museum community
11 we recruit heavily.

12 And so if there is a dearth of Native people
13 working in the National NAGPRA Program, the interns
14 are another way that we have because we have Native
15 students. But these students too have come to us
16 from personal contact and recruitment. I mean I
17 have no shame. I'll go to people and say, send me
18 your son, send me your daughter, and they have.
19 But if any of you, and you all are ambassadors for
20 the NAGPRA Program, if at any time anybody speaks
21 to you about the fact that we're not perhaps as
22 culturally diverse and we may not have Native
23 people, that every time there's an opening I would
24 like you to turn to the person who says that and
25 ask what have you done to help recruit people to

1 the program. And we will have openings in the
2 future and I hope that all people who think that
3 recruitment is an issue should join in the effort.

4 **ADDITIONAL ISSUES**

5 SHERRY HUTT: Issues facing NAGPRA
6 constituents, and I spoke to some of these in
7 Seattle, and that is that continually you all have
8 commented that are all Native American human
9 remains in collections also listed on NAGPRA
10 inventories, and we are – statutorily we don't have
11 the authority to audit, which is something that the
12 GAO can look into as they go out and speak to
13 Federal agencies.

14 **ISSUE OF 300 BACKLOGGED DRAFT NOTICES**

15 SHERRY HUTT: With regard to notices, there is
16 an issue that keeps coming up. It's come up
17 numerous times over the last two years. I have
18 responded to it in dozens of emails, letters, on
19 telephone calls. We put this response up on our
20 website. I have addressed the Review Committee
21 almost every time we have met in the last few
22 years, and still the issue comes up. And let me
23 say, especially again for those of you for whom
24 this is your first meeting or first time you've
25 heard me say this, in 2000 – I came to the National

1 NAGPRA Program at the end of Fiscal Year 2004, and
2 at the very beginning of 2005, I was looking at a
3 stack of things and found that the program had a
4 practice of keeping notices on hold. So a museum
5 or a Federal agency could send in a notice and it
6 would be as a courtesy put on hold, as though
7 submitting a notice, a form of draft notice to the
8 National NAGPRA Program was compliance with the
9 law, which it is not. It is giving authority to
10 publish the notice that complies with the law. So
11 you have your inventory. Within six months of that
12 inventory all the Native American human remains
13 culturally affiliated should be in notices.
14 Submitting a document and then not giving us the
15 authority to publish it does not meet the rule –
16 meet the law.

17 So we took 300 notices that had been pulled
18 out of the publication process and put them into
19 the publication process. We eliminated the on-hold
20 category, and then we began to work with those
21 institutions to move those notices to publication.
22 And Jaime Lavallee, who you've met – many of you
23 have met, made that a priority to work with those
24 institutions.

25 Over the next two years, from 2005 to 2007,

1 over 200 of those 300 notices were published. To
2 date, there are over 220 of the original 300 that
3 were published – that have been published. There
4 were a number that were determined to have been
5 submitted in error. That is, the museum did not
6 receive Federal funds, it was for repatriation that
7 occurred prior to NAGPRA being law and didn't need
8 a notice. It might have been submitted by a
9 Federal agency because there was a new find on the
10 land and they should have published in the
11 newspaper but they mistakenly sent us a notice.
12 There were – particularly universities may have
13 sent us a notice for collections that they had when
14 it was actually a Federal agency collection, so
15 they didn't have the authority of control to make a
16 decision to publish a notice. So we had a number
17 of, if you will, clean-up of files that should have
18 been legitimately closed. And there were about
19 three dozen of those.

20 So when you're left with those notices that
21 have been published, those notices that were – and
22 there were duplicates, because there were some
23 notices that were ten years old and so the Federal
24 agency or the museum submitted a new notices, maybe
25 with additional human remains in it, or they took a

1 notice that had three different tribes in it and
2 broke it into three notices so that each notice
3 pertained to different tribal groups or groups of
4 tribes and it was a better – the notice was more
5 manageable. So they have this duplicate in the
6 file, so we closed out the duplicates. So you're
7 left with about 10 percent – less than 10 percent
8 now. So there are 22 files that we hold as open
9 files where the tribes – where the museum or
10 Federal agency that submitted the draft is
11 consulting with tribes and will likely publish
12 those notices this fiscal year, and you know the
13 government fiscal year begins on October 1.

14 So that's where those 300 went. They weren't
15 pulled out of the process. At no time has the
16 National NAGPRA Program ever pulled a notice. In
17 order to publish a notice we get a fax that says
18 okay to publish, by the authority from the museum
19 or the Federal agency and that goes into the stream
20 of publication. So may we take this mythology,
21 hopefully, and drive a stake into its heart because
22 it's hurtful to tribes when I get a call from a
23 tribal leader who is hurt that we, who are supposed
24 to be facilitating the process, have pulled a
25 notice out of the publication process when that is

1 a predicate to repatriation. That tribal leader
2 has been hurt by that information. And we have a
3 lovely conversation each time I speak to another
4 tribal leader who calls or respond to letters. But
5 this is a hurtful myth and we should go past it.
6 So if you all have any questions at any time on
7 things like that, certainly you either ask it
8 formally or informally, what have you, but let's
9 put that to rest.

10 Since the end of 2004 to today, the National
11 NAGPRA Program has published 800 notices, Notices
12 of Inventory Completion and Notices of Intent to
13 Repatriate. It is our obligation to facilitate
14 notice publication by giving technical assistance
15 and moving those quickly.

16 **CULTURALLY UNIDENTIFIABLE HUMAN REMAINS DATABASE**

17 SHERRY HUTT: So if I might, a couple other
18 statistics, and then I'm going to turn it over to
19 Sangita. Normally I have a full written report for
20 you to review, and we have a lot of projects going
21 and I was editing that report, but let me give you
22 just some statistics. You know there were 200
23 notices published in '09, and they represent – all
24 of the notices to date represent 38,671 human
25 remains and almost a million associated funerary

1 objects that have been in Notices of Inventory
2 Completion, so we are moving forward. But the
3 unidentifiable, the culturally unidentifiable
4 stands at 124,377.

5 So if part of the homework assignment is to
6 take all the culturally affiliated individuals and
7 have them represented in a notice, the next
8 homework assignment is to focus on why there's
9 124,000 unidentified and go back to consultation.
10 And you all asked us to do a homework assignment on
11 that and we're not complete on that. And the
12 reason we're not complete is that going back to
13 look at where those all come from and to see if
14 there's a correlation to certain museums or
15 agencies or what have you, we realize how much data
16 from '97 to 2000 was not entered, and how many
17 times notices were published but not correlated
18 back to an inventory and we're catching up on that
19 data entry. So hopefully by the next time you meet
20 we will have made great strides in having the
21 critical mass of data to enable us to give you the
22 reports that you actually need. So bear with us
23 while we do catch up.

24 **UPCOMING MEETINGS**

25 SHERRY HUTT: One other thing is we had

1 initially talked about a Review Committee meeting
2 in May in DC, and we've asked to put that back to
3 November of 2010 and ask you if you wouldn't have a
4 telephonic meeting sometime in the spring at a date
5 that you will all set during this meeting. And in
6 2010 on the 20th anniversary of NAGPRA, we have
7 reserved an entire week, the week of November 15th
8 because that is the birthday week. The first two
9 days of that week will be NAGPRA at 20, two days of
10 conference on NAGPRA, and then we've reserved the
11 Yates Auditorium at the Department of the Interior,
12 that large ceremonial auditorium for three days of
13 Review Committee meetings. Now you may not need
14 three days, but we want to have it reserved in case
15 you do because you won't have met in person, and
16 there's certain things you can do telephonically
17 and certain things you want to do in person.

18 So I'd like at this point to turn it over to
19 Sangita and I've passed out to you four documents,
20 a report and training seminars. Should I go over
21 this - look at the documents you have here, the
22 ones that I passed out to you. You have the NAGPRA
23 video project, and as you were told previously -
24 and again for those who are new to this meeting,
25 some of the grant funds that were not used, not

1 awarded in 2008 were put into training, and some of
2 that was the NAGPRA video project. What you have
3 on this paper is an accounting for all the places
4 where interviews have taken place, the partners who
5 have worked with us to achieve these videos, and
6 the number of people from tribes, museums, Federal
7 agencies, and others who have been interviewed, 50
8 people as of the time this report was compiled, who
9 are fabulous story tellers for the experiences of
10 NAGPRA. And then on the next page you have the
11 names of the people who have been interviewed, and
12 we have more people to come. Former Review
13 Committee member, founding Review Committee member,
14 Dr. Marty Sullivan was interviewed at the Portrait
15 Gallery where he is now the Director and gave us a
16 room in which to interview all these other people,
17 and had fabulous things, gave us a fabulous
18 interview on NAGPRA that we'll use in a number of
19 places throughout the segments.

20 And then the next thing that you have, the one
21 that says National NAGPRA Program, National
22 Preservation Institute seminars, if you recall some
23 of those funds were placed into a cooperative
24 agreement with the National Preservation Institute
25 to fund training for tribal members, people sent

1 from their tribes, and small museums. And then our
2 partner, the National Museum of the American Indian
3 at the Smithsonian also put some funds toward
4 travel to help leverage the funds that we put in to
5 pay for travel for some of these people as well.

6 So what you have there is a report on where
7 those trainings occurred who the trainers were,
8 because also your suggestion was that we go beyond
9 the National NAGPRA Program to include more people
10 in training, and we have and we hope to have more
11 particularly tribal input into training. So you
12 have the number of grants, the number of people
13 that were present. The second page has
14 partnerships. And then you have who all received
15 training as well, and evaluations from the
16 training. If you turn to the fourth page, you'll
17 see the people that were trained, and I want to
18 call that to your attention because at some point
19 we received some criticism from - I'll just leave
20 it at that, some criticism that the National
21 Preservation Institute did not also say Native
22 Hawaiian organizations, so that Native Hawaiian
23 organizations were unknowing of the ability to
24 participate in this, and you will see a number of
25 Native Hawaiian organizations as recipients of

1 these grant funds for training and for travel.

2 And the other thing that came to mind, the
3 National Preservation Institute not only brought us
4 a partner, the Smithsonian, but also we found –
5 it's a little dent to the ego, but we found that
6 the tribal people who are looking for training on
7 NAGPRA, their first source is the National
8 Preservation Institute website. So we obviously
9 chose well when we chose our cooperative agreement
10 partner, but it tells us that that's the first
11 place they go rather than the National NAGPRA
12 Program website. So we're hoping that more people
13 will go on to our website as well, but not that
14 they don't go on the National Preservation
15 Institute website, but what it tells us is that our
16 partner has leveraged our reach to our
17 constituents.

18 And then the next group is training
19 evaluations. You all have asked us in the past to
20 give you the evaluations that have been received on
21 training that we have done. And that's what you
22 have there.

23 So let me turn it over to Sangita to talk
24 about this lovely document.

25 **SANGITA CHARI**

GRANTS RETROSPECTIVE

SANGITA CHARI: So what you have in front of you, 2008 marked the 15th year that the National NAGPRA Program has given grants, and we had never done sort of a formal assessment of what those 15 years had achieved. And we started with – Sherry had tasked me with putting together a publication that would be of use to the Review Committee. And initially we started out thinking, okay, we'll get data from the database and we'll put together some good statistics for you. And then I realized that a 23-year-old intern and a pivot table could do that in about ten minutes, and we got phenomenal stats but that that was only the tip of the iceberg. And that actually behind every grant we've given out are incredible stories about repatriation, and we had not done a good job in the past of bringing those up.

So what you have here is six months of going through our grants, talking to former grantees, and pulling out just a snapshot of what's really happened with the grants. We have stories and quotes. We tried to be inclusive and get from all parts of the country. And specifically if you go to the middle of the retrospective, there is

1 actually a map which will show you where grants
2 have gone throughout the United States, broken down
3 in terms of which states have received how much
4 money so you can get sort of a snapshot of where
5 money is going throughout. But again, I think even
6 more importantly is a sense of the stories that are
7 out there and that are being told through the
8 NAGPRA grants, and the last page being a list of
9 all grantees.

10 So we have produced a thousand of these, and
11 they're available for free if people want hard
12 copies, but in addition it will be up on our
13 website as a PDF so everybody can access it and
14 download it.

15 SHERRY HUTT: Any comments on the report?

16 SONYA ATALAY: I wanted to comment. This is
17 the first time I've seen it and I thought it looked
18 - it looks wonderful, and I was surprised when I
19 found out how quickly you were able to put it
20 together with just a small group of people. So I'm
21 really impressed. I haven't read it, obviously. I
22 just got it a little bit ago, but it really looks
23 lovely so anyone who hasn't yet received one,
24 please do pick it up and have a look at it.

25 SHERRY HUTT: We just received these the day

1 before we left to come here, and the first person
2 we gave a number of copies to was Assistant
3 Secretary Strictland, who wrote the welcoming
4 letter on the inside flap, so he was absolutely
5 delighted. And so he was the first, if you don't
6 mind, and the Director of the Park Service, and
7 then you all in receiving this. So now that we
8 have given it to you, we have a box here that we'll
9 put in the back of the room so that everybody who
10 has joined us here today can have a copy.

11 SANGITA CHARI: I also wanted to say one other
12 thing. What this did was it allowed me and Sherry
13 and the staff to really start to think about what
14 NAGPRA really means. And through that, we were
15 able to work with a fantastic design company who
16 came up with the logo that you see, which was also
17 part of the video project, but also sort of the use
18 of the colors and the tone. I think - I really am
19 hoping that this does more than really what black
20 and white can do with pieces of paper, but starts
21 to give I think a real texture and flavor to what
22 NAGPRA is beyond the numbers and notices in the
23 Federal Register.

24 SHERRY HUTT: What it means to the community.
25 And while you're speaking, would you speak to

1 NAGPRA at 20.

2 **NAGPRA AT 20**

3 SANGITA CHARI: Yes. So aside from this,
4 NAGPRA at 20, as Sherry mentioned you're having the
5 Review Committee meeting in November to celebrate
6 the 20th anniversary of NAGPRA, and on top of that
7 rather than doing our standard NAGPRA basics
8 training, we're going to be holding a two-day
9 symposium on NAGPRA. What we have done is – we
10 obviously at the office can't pull this one off.
11 What we did was we put together a committee of
12 people who represent museums, tribes and Federal
13 agencies, including Eric on the Review Committee,
14 to help us put together what this should look like,
15 what the feel of it should be, what the workshops
16 should be, how it should flow, everything. We have
17 met – we've been meeting since September, and
18 they're an incredible group. They push me a lot
19 harder than I had expected to. They've been
20 meeting regularly. They have constant email
21 contact.

22 Just so you know, the committee members are
23 Trish Capone with the Peabody Museum of
24 Anthropology at Harvard; Chip Colwell-Chanthaphonh
25 from the Denver Museum of Nature and Science; Clay

1 Dumont, a member of the Klamath and a professor at
2 San Francisco State University; Eric with Little
3 Traverse Bay Bands of Odawa Indians; Joe Watkins,
4 who's the director of the Native American Studies
5 Program at the University of Oklahoma; Fred York,
6 who is the regional anthropologist and NAGPRA
7 Coordinator for the National Park Service Pacific
8 West Region; Emily Palus, who is with the Bureau of
9 Land Management as their NAGPRA Coordinator; Kelly
10 Jackson who is the NAGPRA Coordinator and THPO for
11 the Lac du Flambeau Tribe of Lake Superior; and
12 recently we added Professor Kehaulani – I'm going
13 to mess up her name – Kauanui, who is an associate
14 professor of American Studies at Wesleyan
15 University; and I missed Shannon Keller O'Loughlin
16 who is a member of the Choctaw Nation of Oklahoma
17 and an Indian nations attorney. We went through
18 that fairly quickly.

19 We in fact had a meeting yesterday. We met
20 for the full day, and just to give – and from that
21 meeting we sort of solidified our direction.
22 Essentially what we will try to do with NAGPRA at
23 20 is use that as a forum to remember the past and
24 why NAGPRA was created, consider the present
25 looking at both best practices and challenges that

1 we face today, and consider the future and try to
2 get beyond what would it look like beyond sort of a
3 paradigm and the things that are shaping NAGPRA
4 today but where do we want to go both
5 internationally and theoretically.

6 We will be posting on the website a draft
7 agenda that is intentionally a draft and
8 intentionally unfinished because we don't want to
9 be making all the decisions. That will hopefully
10 be going up in the first week of December and we'll
11 have about eight weeks where we hope that all of
12 you, including everyone here, will comment on it.
13 Let us know if we're missing something, if there's
14 something that needs to be added. We want to make
15 sure that this really reflects what people want to
16 talk about for two days. And that's about it - oh,
17 absolutely, recommend speakers, everything. We
18 want to get as much comment and suggestions as
19 possible.

20 SHERRY HUTT: Any questions about the planning
21 for NAGPRA at 20?

22 SANGITA CHARI: (Comment inaudible.)

23 **SHERRY HUTT**

24 **INTRODUCTION OF MR. RICHARD WALDBAUER**

25 SHERRY HUTT: Yes, I'd be remiss if I didn't

1 tell you that we have a new person on our staff in
2 the National NAGPRA Program. He is not new to
3 NAGPRA, and it's Dr. Richard Waldbauer, and he
4 began on October 1. He was with the Park Service
5 and has sort of shifted from his other duties to be
6 part of our program. And he will be working on
7 technical documents and reports and meetings such
8 as getting the Federal agency meetings together.
9 He will be working with Patricia Zell on 10.7. And
10 just there's a number of technical compliance
11 things that we need to do in the program, and we
12 need to be on time with those and moving the
13 regulations forward.

14 One of his big projects right from the get go,
15 and this is something that you all will - I'm
16 soliciting your input on, is what of the original
17 regulations, the 1995 NAGPRA regulations need
18 amending and updating. Because even as we look at
19 the reserve sections and we develop the reserve
20 section on unclaimed on Federal and Indian lands,
21 which is subsection 10.7, a number of issues have
22 arisen from time to time regarding how well the
23 other - the original regulations define things or
24 make things workable. Are there ambiguities in
25 there? Are there things we need to work on? Not

1 supposing what the answers to the questions are but
2 just identifying which sections of the rule need
3 study and perhaps amending. And that – and Dick's
4 first task is to make sure that he canvasses folks
5 and coalesces those into a list and that we begin
6 to work on the amended regulations as well. At 20
7 years, we've had some experience working with these
8 regulations. How might we best communicate the
9 practice, the guidance in the regs.

10 So Dick will be joining us, so if you see
11 someone else answering the phone or on our website,
12 Dick Waldbauer has been with the Park Service and
13 was with the NAGPRA Program when it first began
14 before it was separated out from the Park Service.
15 But he has a great deal of experience in technical
16 drafting and being a person who looks to bring in
17 many voices and input, very open person. So we're
18 pleased to have him for the period of time that he
19 will be with us.

20 DAN MONROE: Thank you. Questions?

21 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

22 ROSITA WORL: I have one question that wasn't
23 covered in the report.

24 DAN MONROE: Yes.

25 ROSITA WORL: We had made recommendations about

1 – I saw it in the last minutes about the quorum
2 requirement, and where are we with that?

3 SHERRY HUTT: Yeah, two things, one was the
4 quorum requirement and the other was putting back
5 in the holdover provision, the continuing to serve
6 until appointed. And so we've gone back to the
7 policy people at the Department so we can work on
8 getting that amended. I mean the charter comes up
9 for review every two years. We don't want to wait
10 until November of 2010, so we've asked them to get
11 to work on that now.

12 DAN MONROE: Yes, Eric.

13 ERIC HEMENWAY: I'd just like to make a quick
14 comment. The bulk of my responsibilities is doing
15 repatriation for my tribe and I work with a lot of
16 the tribes in Michigan on dispositions. And I'd
17 just like to say for the record the NAGPRA staff
18 has always been very helpful whenever I have
19 questions, whenever I needed information they would
20 respond, answer my phone calls.

21 When I first started in my position I didn't
22 really know a lot about NAGPRA, and I would like
23 incessantly call and ask questions and like, what
24 do I do, who do I need to talk to, how do I get
25 this done? And they would always just keep giving

1 me information and say, okay, you need to do this,
2 this is what you need to do. And I always joked
3 with Jaime that whenever I get my first notice
4 published that I worked on I'm going to frame it
5 and hang it up. And she was like, oh, that's cool.

6 So since then, I've worked on 22 notices that
7 have been published and I hang them up all on my
8 wall. So my boss really thinks I'm a nerd for
9 this, but as a tribe that's our measure of success
10 also is that notice. And I get all giddy when it's
11 published because I know within 30 days we can go
12 pick up whatever we need to pick up or rebury
13 whoever we need to rebury. So that is what we also
14 use as like a barometer of accomplishment of
15 success is these notices. And it's notices for
16 items, notices for remains, and you know, I've got
17 a big florescent X going through all the ones that
18 are completely done. And I've only got a few left
19 that are blank, but I'm always looking to add more
20 onto my board and I'm hoping it goes onto the next
21 wall because they're all - all my walls are bare.
22 It's a pretty boring office.

23 But it's just I think a testament to a
24 collaboration between not just the tribe and the
25 museum but the program, because they've always been

1 transparent, they've always been open with the
2 information that they give us, and I see a lot of
3 parallels between museums and tribes having a small
4 staff doing a lot. And it's the same with the
5 program; they have a small staff and they do a lot.
6 So I'd just like to say thank you for all your help
7 from Michigan and on behalf of all the other
8 tribes. Thanks.

9 DAN MONROE: Thank you.

10 Other comments or questions?

11 DONNA AUGUSTINE: Thank you for your hard work
12 and all that you've done.

13 SHERRY HUTT: I'll convey that to the staff.
14 Thank you.

15 DAN MONROE: Could you tell me how many civil
16 penalties have we assigned?

17 SHERRY HUTT: How many have —

18 DAN MONROE: How many have been assigned?

19 SHERRY HUTT: All right. There have been a
20 total of — incoming, a total of 168 received
21 allegations or counts, not 168 museums, but 168
22 allegation counts, correct?

23 DAVID TARLER: (Comment inaudible.)

24 SHERRY HUTT: Okay. I should have let David
25 answer that, because he's the civil penalties

1 person, but he is indicating 233 all together, and
2 remaining to be investigated are 122. Now you all
3 had expressed in prior meetings that if there's a
4 backlog to be investigated and there's new
5 allegations coming in, for instance in '09 we
6 received 65 new allegations, that unless we reduce
7 that backlog substantially we will never get ahead
8 of the curve here. To that end, I was given
9 additional funds in the NAGPRA budget for '10, for
10 FY10, and in partnership – I'm so glad you raised
11 this because I neglected to mention this, in
12 partnership with the National Park Service Law
13 Enforcement, they're kicking money in, and we have
14 a new partner. We're really pleased. The Indian
15 Arts and Crafts Board, which is located in the
16 Department of the Interior, has funds and has a
17 need for a criminal investigator, and the
18 investigation of those cases, those crimes where
19 gift shops are selling as Native objects that are
20 not created by tribes, by tribal members. And so
21 they are an enforcement body for that, so we have
22 joined forces to support a law enforcement agent.

23 And Bob Palmer will still be – thankfully,
24 will still be working with us, but we have more
25 funds so we can buy more of his time. He works in

1 a National Park, Effigy Mounds National Park. And
2 if you're ever by there or have occasion to visit
3 there you want to say to the Superintendent Phyllis
4 Ewing how grateful you are because she allowed - he
5 is an investigator for her at the park, but what
6 she does is she takes our funds and hires a
7 seasonal or a temporary to back up when Bob's not
8 there. Thus enabling us to have as much of his
9 time that we want to pay for, and we're paying for
10 - last time we had maybe, what, 10 percent of his
11 time? And now we're going to have more than 50
12 percent of his time. So that means that we'll be
13 able to do more civil penalties. That he and David
14 - he'll keep David even busier than he has been to
15 bring more cases to fruition, to complete more
16 investigations in FY10. So we're very pleased to
17 report that. Thank you for prompting me.

18 And of course we're - the partnership that we
19 have with the Law Enforcement and IACB is
20 important, but we also feel that Bob Palmer because
21 he is both a law enforcement agent, he's an
22 archaeologist, and he has that sense when he walks
23 into museums of being - he understands the decorum.
24 He may carry a gun, but it's very soft and hidden,
25 and he's looking for compliance and working with

1 people. Not what you want when you walk into a
2 museum is someone carrying a gun. It's not on his
3 hip.

4 So we're - and I have to say this about Bob.
5 He's not here. He's been in other meetings, but in
6 all the cases that he's investigated, and it's a
7 shock to some museum directors, I mean it's not
8 every day that a law enforcement person walks into
9 your museum. And in all of these cases I have not
10 received one negative response from a museum
11 director or counsel for a museum. They have all -
12 Bob's idea is that you go in and you raise their
13 consciousness and then they call back to the
14 program for help in getting into compliance. But
15 it has all been a very - if being investigated and
16 having a civil penalty can be positive, I mean it's
17 been a very good experience. Not one person has
18 ever commented negatively on the way in which he
19 has handled an investigation, and given the
20 tensions that are likely to be out there it's a
21 substantial point.

22 DAN MONROE: And how many civil penalties have
23 been issued?

24 DAVID TARLER: Thank you, Mr. Chair. To date,
25 seven Notices of Penalty Assessment involving six

1 museums have been issued by the Assistant
2 Secretary, and in one case the Assistant Secretary
3 determined following informal discussion with the
4 museum that the institution of a civil penalty was
5 not an appropriate remedy, and that is permissible
6 under the regulations. All together, the 7 notices
7 have assessed penalties in the amount of \$38,490,
8 and as of the end of Fiscal Year 2009, \$26,170 in
9 penalties has been paid by 5 of the museums. Of
10 that amount, \$19,920 was paid in Fiscal Year 2009
11 alone. And with respect to the one other museum
12 which has been assessed a penalty of \$12,320, the
13 45-day period, waiting period, has not yet run.

14 DAN MONROE: Thank you.

15 MERVIN WRIGHT, JR.: Excuse me, David –
16 Mr. Tarler, can you repeat what you said there? I
17 think you mentioned the Secretary made some
18 determination about the regulation?

19 DAVID TARLER: The Secretary – the Secretary
20 has the discretion to determine that the imposition
21 of a civil penalty is not an appropriate remedy.

22 MERVIN WRIGHT, JR.: Okay.

23 DAVID TARLER: We investigated an allegation of
24 failure to comply against a museum and recommended
25 that the Secretary determine that a failure to

1 comply had occurred with respect to one count. The
2 museum that received the Notice of Failure to
3 Comply may request informal discussion during the
4 45 days from the date on which it receives the
5 notice. We conducted informal discussion, and as a
6 result we made a recommendation to the Assistant
7 Secretary that the institution of a civil penalty
8 would not be an appropriate remedy and the
9 Assistant Secretary concurred.

10 MERVIN WRIGHT, JR.: Thank you.

11 DAN MONROE: With respect to the infamous issue
12 of notices being purportedly withheld, could you
13 just briefly, Sherry, explain why the notices were
14 in hand when you came on board in 2004?

15 SHERRY HUTT: Some of them had been logged in.
16 Some of them hadn't been logged in. Some of them
17 were formally listed on hold as an accommodation to
18 an institution, and some of them were backlogged as
19 not having been addressed by the staff. So it was
20 a number of reasons, but – and some of these had
21 been on hold for 5 to 10 years.

22 When a museum or Federal agency submits a
23 notice to our program, to Jaime, it will reach the
24 Federal Register usually in two to four weeks. And
25 what occurs during that time is Jaime will check it

1 against the inventory to make sure that the notice
2 is accounted for in the inventory, otherwise we
3 need an – you know, if the institution or the
4 museum is getting ahead of itself we'll need an
5 amended inventory. Like if they found human
6 remains and they put them in a notice, we need an
7 amended inventory to coincide with the notice. So
8 she is looking at technical things, making sure all
9 the pieces are there so you don't need to do a
10 corrective notice.

11 And when the final notice is ready she sends
12 it electronically back to the museum or the Federal
13 agency, they print it out, sign on it, you know,
14 okay to print, and send it – fax it back to us.
15 When she has that faxed notice, she puts it in a
16 file for me to sign off on it. It goes over to the
17 Department of the Interior, where because it's
18 being published by a Federal agency somebody above
19 us checks all the things that go to the Federal
20 Register, so it might be over at the Department of
21 the Interior for a few days, and then we get an
22 okay to print. And Jaime sometimes will physically
23 – she's a marathon runner, she will sometimes
24 physically run these tapes over to the Fed Reg to
25 get them printed.

1 And we save time on these also because Robin
2 Coates, who has been here checking people in, we –
3 the Federal Register because we do so much business
4 with them and because they trust us, we have their
5 program on one of our computers. We have a
6 dedicated – their very antiquated but very unstable
7 software is loaded on one of our computers so that
8 Robin can actually format notices that go over to
9 the Fed Reg to be published. So it saves some days
10 in getting to publication. Saves us money, saves
11 us thousands of dollars every year. Our print bill
12 with the Federal Register is about 90,000 a year.
13 This year it will be over 100,000 just in our print
14 costs with the Federal Register. So Robin saves us
15 money and time. Jaime runs those things over.

16 The Federal Register will print something
17 about three days after they get it. They format
18 it, you know, they put it into the process, and
19 they print it three days later. So from the time
20 it comes in the door to the time the Fed Reg prints
21 it is about a month. It can be a couple extra
22 weeks, but certainly not six months to a year to
23 four or five years. That – you know, that would be
24 an issue.

25 DAN MONROE: So just for the record, when you

1 came on board there were 300 notices that had been
2 held back for a variety of reasons, 220 have since
3 been published, and you're currently holding 22 to
4 be processed. In other words, what's actually
5 happened is that you've addressed a very serious
6 issue and largely solved it. And I'd like that to
7 be put clearly on the record, given the confusion
8 that's surrounded that issue for some time.

9 Are there any other questions? Yes.

10 ROSITA WORL: Mr. Chair, first of all I wanted
11 to also echo what Eric says, you know, we have 200
12 tribes in Alaska, and I would say that I probably
13 know most of them and I want to also say that we
14 just have been very pleased with the NAGPRA office.
15 I've been around since the beginning and I would
16 say that there's been tremendous progress and I
17 want to compliment the staff. I want to compliment
18 you on all of the new things that you're doing, the
19 video project, this report. This report is really
20 moving. Some of the people who are featured are no
21 longer with us, but you know, it's beautiful. I
22 wish I could tell you all the stories behind these
23 repatriations and its significance and meaning to
24 our people at home.

25 But I noted that you said that we — because of

1 our budget, we would only have one meeting and one
2 audio conference call. And I just have to say that
3 I'm deeply grieved by that. I understand the issue
4 with budget, but we clearly need to emphasize this
5 with our congressional delegation that we have to
6 have further funding. I mean, NAGPRA is just too
7 important to the Native American community and
8 museums and the public at large. The benefits from
9 it, you know, are just untold. And in this meeting
10 we have eight requests for disposition, and
11 hopefully we're going to have those CUI regs
12 published so people will not have to wait for a
13 meeting to come around if we are only going to have
14 one face-to-face meeting a year.

15 If you recall, we had one audio conference
16 call and from that we said we would never do
17 another audio conference call where we actually had
18 to do business. We could do informational things,
19 updates, you know, but no – but an audio conference
20 call that doesn't take any action. Maybe there are
21 other ways we could do it with – I mean, we all are
22 much improved technology. I know a lot of us Skype
23 our family, you know, and I just have to note it
24 for the record that I am concerned that this
25 legislatively mandated body can only meet once a

1 year. And we should really emphasize that in our
2 report to Congress.

3 DAN MONROE: Other comments?

4 Thank you very much for all of your good work
5 and for an excellent report.

6 SHERRY HUTT: Thank you.

7 DAN MONROE: Are we connected to Georgia?

8 DAVID TARLER: Yes, we are, Mr. Chair.

9 DAN MONROE: So we still have a technical –

10 DAVID TARLER: We do.

11 DAN MONROE: Thank you. We – instead we'll
12 move forward and ask Carla Mattix if she could give
13 us a brief update on guidance on repatriation and
14 the 90-day rule.

15 **GUIDANCE ON REPATRIATION AND THE 90-DAY RULE**

16 CARLA MATTIX: Some of you might recall that
17 the – what we're calling the 90-day rule has come
18 up in previous disputes and some questions. And
19 where this comes from is the section in the
20 statute, section 7 on repatriation that essentially
21 says once cultural affiliation has been determined
22 that agencies and museums must expeditiously
23 repatriate those items. So when the – when it came
24 time to write the regulations, the agency had to
25 figure out what does expeditiously mean exactly.

1 And the interpretation in the regulation is this
2 90-day rule. Eric referred to a portion of it
3 earlier about the 30 days, which is one part of it,
4 but essentially the regulations say that once all
5 of the portions of a claim are confirmed to be
6 valid and if there's a written request, when that
7 request is received the agency or museum has 90
8 days to repatriate but – there's a but – the
9 notice, whether it's the Notice of Intent to
10 Repatriate or the Notice of Inventory Completion,
11 must have been published in the Register for 30
12 days at least before repatriation can go forward.

13 So that's in summary the 90-day rule. It's in
14 section – it's in 43 CFR 10.10 (a) and (b),
15 depending on whether you're talking about summary
16 items or inventory items. So there's just –
17 there's been some confusion on this rule and what
18 we had thought might be a good idea is to develop
19 some additional guidance to help clarify and
20 explain what some of these timelines mean and
21 provide some examples and things like that. So
22 we're – I just wanted to let you know that we're in
23 the process of developing this, and it will be
24 available once it goes through all the appropriate
25 review and approvals. It will be available on the

1 National NAGPRA website as additional guidance.
2 And it is important because it does come up in the
3 dispute context. We get questions, and it can also
4 – if a museum does not comply with the 90-day
5 provision there is the potential for a civil
6 penalty. So it is a fairly important time frame,
7 and we just want to make sure that it's clear to
8 those involved of how to comply with that.

9 DAN MONROE: So just to clarify, in the case in
10 which we're talking about for example cultural
11 items, the 90-day rule applies once all of the
12 relevant information has been received and
13 processed as a part of the consultation process.
14 Is that correct?

15 CARLA MATTIX: Well, the way the rule is
16 actually worded it says repatriation must take
17 place within 90 days of receipt of a written
18 request for repatriation that satisfies the
19 requirements of 10.10 (a), which are all those
20 different requirements for making a valid claim.

21 DAN MONROE: Once the conditions – once those
22 have been satisfied.

23 CARLA MATTIX: Yes, upon – and this is why it
24 gets confusing because of the wording. It – the
25 repatriation must take place within 90 days of

1 receipt of a written request of a request that
2 satisfies those requirements.

3 DAN MONROE: So it may take much longer than 90
4 days to satisfy those conditions.

5 CARLA MATTIX: And that's exactly the question
6 that comes up that we're going to try to provide
7 some clarification on.

8 DAN MONROE: And your proposal is -

9 CARLA MATTIX: We're working on it.

10 DAN MONROE: Okay.

11 STEPHEN SIMPSON: Our proposal is to issue
12 guidance, Mr. Chair.

13 DAN MONROE: I think it would be a good thing
14 to issue guidance, and I assume that we'll have an
15 opportunity once you've finished your work to
16 listen to the proposal and discuss it.

17 CARLA MATTIX: Sure, and this often doesn't
18 even come up as an issue because in most cases -
19 many cases a notice has been published and then the
20 request comes in. And when the notice has already
21 been published, all of those components for meeting
22 a valid claim are usually there already so things
23 can proceed very quickly. It's more often the case
24 where a notice has not been published in the case
25 of cultural items that it comes up once in a while.

1 DAN MONROE: Okay. Questions? Yes, Eric.

2 ERIC HEMENWAY: I'd like to make a comment on
3 the 90-day rule. When we're sending out a claim
4 from our tribe it seems like the 90-day rule is one
5 of the only tools that we have to make sure the
6 museum kind of moves along with our claim. And if
7 we don't have that then the museum can just waiver
8 on if they're going to repatriate the item or not,
9 if they're going to decline the item or decline the
10 repatriation. And if we – even if we get an answer
11 for declining, at least we can know we can move
12 onto a dispute or other means. But a lot of times
13 we don't even get that answer, and it just sits in
14 limbo, sometimes for years. And the museum has
15 this like loophole, and they say, well, we don't
16 have to really – we're going through reading the
17 material, we haven't made a decision.

18 But you know, I speak on behalf of my tribe,
19 but other tribes I think it's pretty clear that
20 they put a lot of work into these claims. A lot of
21 research is done, a lot of work is done, and to say
22 that well, we need more information, we need this
23 and that, is just I think a way for some museums to
24 keep holding on to items or remains. But this is
25 an issue that needs to be resolved because we kind

1 of have our hands tied when it comes to this. We
2 can't really say, well, it says right in the law
3 within 90 days because they can counter that. So
4 the quicker this gets done the happier we would be.

5 DAN MONROE: I think that there are instances
6 in which museums have taken quite some time to
7 respond. On the other hand, I think in many – at
8 least a fair number of cases there are legitimate
9 issues regarding consultation and questions that
10 are not answered that cannot be answered in 90
11 days. And therein lies the rub with this issue.

12 I think both parties, both tribes and museums
13 have some legitimate kinds of issues here and the
14 fact that there's an apparent – at least it appears
15 that sometimes there's a loophole that prevents the
16 process to go on an undue period of time is a real
17 concern. On the other hand, there's a real concern
18 that the consultation process be completed and that
19 all of the information needed for decision making,
20 legitimate information, be acquired. So I'll look
21 forward to hearing how you try to walk this line.
22 Thanks.

23 Any other comments? Yes.

24 ROSITA WORL: Could you review again the
25 process that you're going through to develop this?

1 I mean, had you looked at case studies or –

2 CARLA MATTIX: Yeah, we have looked at some of
3 the situations in the past where this has come up,
4 I think, before the Review Committee and some other
5 civil penalty situations where this has come up as
6 well, to look at the actual way this has played
7 out. And so that's what we're basing it on.

8 ROSITA WORL: Well, I have one good study for
9 you. I have been working on one for about 12
10 years. But I also wanted to report that I also
11 have another one, and it's featured in this report,
12 from the Phoebe Hearst, and I know the Phoebe
13 Hearst has drawn a lot of attention, but in our
14 case they were superb. I think we finished it in
15 less than a year. So we know that it's possible.
16 And I want to compliment the Phoebe Hearst, you
17 know, for the wonderful job that they did in the
18 repatriation of Kudeinahaa's tunic.

19 DAN MONROE: Other comments?

20 MERVIN WRIGHT, JR.: Yeah, I've got a comment.
21 So your guide basically is going to be more of a –
22 more of a suggestion rather than some kind of a
23 rulemaking as far as what needs to be complete
24 prior to the 90-day initiation, because it sounds
25 like when a letter is submitted filing a claim for

1 repatriation and then you look at the requirements
2 that have to be met, some of them haven't, then
3 you've got that 90-day window to complete that.
4 And as was said here that sometimes museums or even
5 tribes might not have the ability to complete all
6 that, so consultation, inventory, summaries,
7 whatever needs to be completed. I mean, just as we
8 heard this morning, you know, there – what is going
9 to trigger that 90 days or is that 90 days going to
10 be amended to look at some other mechanism to
11 complete a repatriation?

12 CARLA MATTIX: Yeah, this – what we're doing
13 right now is really guidance that will come out
14 through the program. In the future, in looking at
15 potential regulation – amendments to the current
16 regulations, this is an area that we would look at
17 to help clarify in the future. Now that the regs
18 have been out for 15 years, we have more experience
19 with how they are actually – how they work on the
20 ground and we'll see whether this requirement is
21 actually meeting the needs of the people that need
22 to do this. So that's definitely an area that
23 we'll look at in any future amendments.

24 DAN MONROE: Okay. Very good. Thank you.

25 DAVID TARLER: Do you want a break?

1 DAN MONROE: Let's take a break, and then we'll
2 hopefully be able to move back to the Georgia
3 Department of Transportation case.

4 It's five until 3:00. Let's reconvene at a
5 quarter after 3:00 please.

6 **BREAK**

7 DAN MONROE: — make some adjustments to the
8 agenda to accommodate the technical problems that
9 we're having with Georgia and to permit a bit more
10 time for preparation of the discussion regarding
11 the presentation and approval of a report to
12 Congress. And I would just add that we will during
13 that time discuss the recent hearing in the House
14 under Congressman Rahall's Natural Resources
15 Committee. We'll undertake that discussion
16 tomorrow at 1:00 o'clock, and what I would like to
17 do now is to ask that Shannon Keller O'Loughlin and
18 Christine Abrams —

19 DAVID TARLER: Mr. Chair, we're ready to go
20 with Georgia.

21 DAN MONROE: Oh, Georgia is ready to go.

22 DAVID TARLER: Yes, we are.

23 DAN MONROE: Okay. Very good. We'll shuffle
24 things around a bit more. Then let's proceed while
25 we've got a connection.

1 ERIC DUFF: Hello.

2 DAN MONROE: Yes, hello.

3 ERIC DUFF: Can you hear?

4 DAN MONROE: Hello.

5 ERIC DUFF: Hello.

6 DAN MONROE: Can you hear us? Hello.

7 ERIC DUFF: Yes, I can.

8 DAN MONROE: Thank you. I assume you can hear
9 us now as well. Is that correct?

10 Hello.

11 ERIC DUFF: Hello. Can you hear me?

12 DAN MONROE: Yes, can you hear us?

13 ERIC DUFF: I can hear you now.

14 DAN MONROE: All right. Very good. Please let
15 us know if you cease to be able to hear us and -

16 ERIC DUFF: You are breaking up, though.

17 DAN MONROE: I'm breaking up? Oh, good.

18 That's great. Okay. Let's see if we can proceed.

19 This is Mr. Duff, correct?

20 Mr. Duff?

21 ERIC DUFF: Yes.

22 DAN MONROE: Yes, could you please proceed with
23 your testimony?

24 ERIC DUFF: Okay. Let me know if you can't
25 hear me.

1 DAN MONROE: We can hear you.

2 REQUEST FOR A RECOMMENDATION REGARDING AN AGREEMENT
3 FOR THE DISPOSITION OF CULTURALLY UNIDENTIFIABLE
4 HUMAN REMAINS IN THE POSSESSION OF THE GEORGIA
5 DEPARTMENT OF TRANSPORTATION, GA
6 PRESENTATION
7 ERIC DUFF

8 ERIC DUFF: Okay. My name is Eric Duff. I'm
9 an archaeologist with the Georgia Department of
10 Transportation and on behalf of my agency, I'm
11 requesting a recommendation from the Review
12 Committee regarding an agreement we have with the
13 United Keetoowah Band of Indians in Oklahoma for
14 the disposition of the culturally unidentifiable
15 remains from the Lover's Lane Site that are in the
16 possession of the Georgia Department of
17 Transportation. Just to give you a little bit of
18 background about the information in your packets,
19 we completed the NAGPRA consultation and the
20 inventories between 1994 and 1996 for Lover's Lane,
21 and based on that consultation, the human remains
22 and the associated funerary objects were considered
23 and determined to be culturally unidentifiable.

24 In 2007, we were contacted by the United
25 Keetoowah Band and asked to provide an update on

1 the Lover's Lane material and the NAGPRA
2 consultation. We did that, and in 2008 they sent
3 us a letter officially requesting the ability to
4 repatriate the remains at that time. Based on
5 their response we felt very strongly that we needed
6 to reintroduce the entire NAGPRA consultation
7 package to all the tribes, all our tribal partners
8 at that time. And so what we did is we contacted
9 them. We sent out all the 1994 through '96
10 material, and we let them also know that the UKB
11 had officially requested to repatriate the remains.
12 We felt like it was incumbent on us to provide that
13 information. It had been almost 12 or 13 years
14 since they had last seen the consultation
15 materials, and it was our hopes that that would
16 help their decision-making process at that time.

17 We got two comments back from that material,
18 one from the Miccosukee Tribe of Indians and one
19 from the Catawba Indian Tribe in South Carolina,
20 Miccosukee obviously in Florida. No one had
21 objections to repatriating the material with the
22 United Keetoowah Band and no one had expressed an
23 interest, at least through that consultation and
24 through that correspondence, to be part of the
25 repatriation of the Lover's Lane material.

1 Based on those responses we then entered into
2 a disposition agreement with the United Keetoowah
3 Band to repatriate the remains to them, and we
4 respectfully request the Review Committee to
5 provide a recommendation on that disposition
6 agreement.

7 DAN MONROE: Thank you very much. Are there
8 questions?

9 ERIC DUFF: Hello?

10 DAN MONROE: Yes, go ahead.

11 (No response.)

12 DAN MONROE: Questions. Everyone prepared to
13 act?

14 I'll entertain a motion.

15 **REVIEW COMMITTEE MOTION**

16 ROSITA WORL: Mr. Chair, I move that the Review
17 Committee recommend to the Secretary of the
18 Interior the disposition of the two culturally
19 unidentifiable human remains and the associated
20 funerary objects in the possession of the Georgia
21 Department of Transportation to the Keetoowah Band
22 of Indians.

23 DAN MONROE: Thank you. Is there a second?

24 DONNA AUGUSTINE: I'll second it.

25 DAN MONROE: It's been moved and seconded.

1 ERIC DUFF: Hello.

2 DAN MONROE: Hello.

3 ERIC DUFF: Can you hear me?

4 DAN MONROE: Yes, we can. We're just in the
5 process of acting on your testimony.

6 ERIC DUFF: I can't hear you.

7 AUDIO TECHNICIAN TO ERIC DUFF: They're in the
8 process of acting on your testimony.

9 ERIC DUFF: Okay.

10 DAN MONROE: Let's proceed here. Any further
11 discussion?

12 All those in favor of the motion and the
13 second?

14 SONYA ATALAY: Aye.

15 DONNA AUGUSTINE: Aye.

16 ERIC HEMENWAY: Aye.

17 DAN MONROE: Aye.

18 ROSITA WORL: Aye.

19 MERVIN WRIGHT, JR.: Aye.

20 DAN MONROE: Opposed? Motion carries
21 unanimously, and I suggest we cut this connection
22 and notify the Georgia Department of Transportation
23 that we appreciate his testimony and this issue is
24 resolved. Thank you.

25 Again, we are going to modify the schedule a

1 bit, and I would like to ask Shannon Keller
2 O'Loughlin and Christine Abrams to please join us
3 and to make their presentation, and once again we
4 will consider the report to Congress at 1:00
5 o'clock tomorrow.

6 Welcome. Thank you for joining us. Who is
7 taking the lead?

8 **PRESENTATION**

9 **SHANNON KELLER O' LOUGHLIN**

10 SHANNON KELLER O' LOUGHLIN: Hi, I'm Shannon
11 Keller O'Loughlin. I'm from the Choctaw Nation of
12 Oklahoma. Today I'm here to talk to you about a
13 couple of things as been directed to me from the
14 Onondaga Nation and the Haudenosaunee Standing
15 Committee on Burial Rules and Regulations. But
16 first, to the right of me is Christine Abrams. She
17 is the Acting Chair of the Haudenosaunee Standing
18 Committee on Burial Rules and Regulations, and she
19 would like to make a statement.

20 DAN MONROE: Thank you.

21 **CHRISTINE ABRAMS**

22 CHRISTINE ABRAMS: (Native American language.)
23 I am thankful that you are well. I am a citizen of
24 the Tonawanda Seneca Nation and member of the
25 Beaver Clan. I live on the Tonawanda Seneca Nation

1 territory near Buffalo, New York. I extend to you
2 greetings from the Haudenosaunee, also known as the
3 Six Nations Confederacy or Iroquois Confederacy.
4 Haudenosaunee meaning People Who Live in the
5 Longhouse or the People of the Longhouse,
6 signifying the collective nature of our
7 Confederacy. I give you greetings from the Council
8 of Chiefs of the member nations, the Seneca,
9 Cayuga, Oneida, Onondaga, Mohawk and Tuscarora. I
10 give you greetings from the Clan Mothers, Faith
11 Keepers, the men, the women, and the children, and
12 hope that you and your families and associates are
13 in good health.

14 I would like to thank the NAGPRA Review
15 Committee for this opportunity to speak before you
16 on a very sensitive issue, yet a crucial issue,
17 culturally unaffiliated or unidentifiable human
18 remains. I am presently the Acting Chairperson of
19 the Haudenosaunee Standing Committee on Burial
20 Rules and Regulations, an entity sanctioned by the
21 Grand Council of Chiefs, the same committee is
22 responsible, not only for NAGPRA-related issues but
23 National Historic Preservation Act Section 106
24 consultation, protection of sacred sites, and most
25 importantly the duty to care for our ancestors,

1 meaning the burial sites and human remains.

2 My first experience with our ancestors came in
3 1999 when there was an inadvertent discovery of
4 human remains at a site that was to become a rock
5 salt mine. It was a private development in which
6 we were not notified of these discoveries, and the
7 human remains had already been removed and placed
8 in a local museum. The company would not meet with
9 us, so we held a protest and press conference to
10 tell about the desecration of our burial sites.

11 Eventually we met with the company CFO for
12 several meetings to discuss the few remains left at
13 the site. The company refused to develop an
14 alternate site for the railroad spur that was to be
15 built over the human remains. Avoidance was not an
16 option to them. When it became apparent we were at
17 a stalemate and neither side was going to budge, we
18 halted the discussions. The silence in that room
19 was deafening. I felt that we had failed our
20 ancestors, and the grief I felt I never wanted to
21 feed again. But when it is your duty, your job to
22 protect burial sites and human remains, that's a
23 promise that's hard to keep especially when you're
24 dealing with Section 106 consultations.

25 There are so many projects that come before

1 us. Never did I think that undertakings would
2 result in us becoming undertakers. It was a role
3 we did not anticipate, but it's a role we continue
4 to play as we pursue repatriation of our ancestors
5 via NAGPRA. It's a role that will continue as long
6 as our ancestors are still sitting on shelves,
7 packed away in boxes, whether in museums,
8 universities, repositories, and even private homes,
9 waiting for their relatives, their people to come
10 for them.

11 Desecration of our ancestors' burials is a
12 violation of our spiritual beliefs, human rights
13 and treaty rights. The journey and the words said
14 to them have been interrupted. The spiritual well-
15 being of our people today are put in jeopardy as
16 well. Our religious freedom is violated when state
17 permits allow desecration of our ancestors' burial
18 sites for the sake of development, and most times
19 we are forced to remove them because we entered
20 into the consultation process too late. The damage
21 had already been done. Our ancestors are afforded
22 no protection in New York State because there are
23 no state burial laws.

24 As mentioned in the NAGPRA training yesterday,
25 NAGPRA was created as human rights legislation but

1 yet it feels all the power is in the hands of the
2 museums because they make the determinations and
3 decisions while we, the Native people, have the
4 burden of proof to prove that an object or that the
5 human remains found in our aboriginal territory
6 belongs to us. What archaeologists have dug up
7 they will then piece together as the truth and
8 nothing but the truth. It was also mentioned that
9 no one can own human remains but yet thousands of
10 our ancestors continue to be held captive in your
11 institutions. There is talk about the right of
12 possession and the buzzword control, but where is
13 the humanity aspect in this law, the moral compass
14 to give our ancestors the dignity they deserve and
15 preserve the sanctity of their final resting place.

16 The violation of our ancestors' burial sites
17 is also a violation of our treaty rights. Our
18 promise to the Haudenosaunee in the terms of the
19 1794 Canandaigua Treaty was not to disturb the
20 Haudenosaunee in the free use and enjoyment of
21 their lands. When a person or event was to cause
22 great harm to the Haudenosaunee we only had to
23 inform the President and the cause of the complaint
24 would be removed. A letter was written by the
25 Tonawanda Seneca Nation in the matter of the Rock

1 Salt Mine; however, it was never reciprocated with
2 a response. But we did our part and put the
3 situation of the desecration of our burial sites on
4 record.

5 So it is not only a disturbance of reburial
6 sites that we as Native people have experienced, it
7 brings in a lot of different elements. As my
8 sister Donna Augustine stated yesterday, there is
9 an unwritten law involved here, there's traditional
10 law, spiritual law, and it comes from the heart.
11 We are talking about our relatives. At a
12 consultation held by the local museum, one of my
13 Elders said to a Native American relation committee
14 member of the museum, you will never have the
15 understanding of what our ceremonies mean to us,
16 you will never feel the connection of our cultural
17 patrimony. But how was my Elder spoken to later on
18 by a committee member in a private conversation,
19 rudely with an attitude that he didn't know what he
20 was talking about. So we still struggle with
21 disrespect, the old school thinking, and that
22 possession is nine-tenths of the law.

23 The issue of culturally unidentifiable human
24 remains is perplexing and frustrating to me. What
25 is it that makes museums and other institutions

1 want to hold steadfastly to the human remains of
2 our ancestors? I really would like to have an
3 honest, open dialogue about that to know the
4 answer. What use are these culturally
5 unidentifiable human remains to you that can't
6 provide you answers? If you can't connect them to
7 a culture, and therefore a people, what kind of
8 value do they offer you? If it's none, then let my
9 people go.

10 But then you ask, where would they go, who
11 will take them? We learned yesterday that there
12 are many other tribes and nations who are willing
13 to do reburials for those tribes and nations who
14 will not accept the repatriation of human remains
15 due to spiritual beliefs. That's an option. I
16 recognize and appreciate that offer, but the number
17 of culturally unidentifiable human remains is
18 great, so to accommodate them for reburial would
19 require a massive area. Yet America recognizes and
20 protects the remains of its unidentified soldiers
21 and has memorialized them at the Grave of the
22 Unknown Soldier in Arlington Cemetery. No one
23 worries about their lineage. They are treated with
24 respect and dignity.

25 Our Native American ancestors are also

1 connected to us and it does not matter whether they
2 are Haudenosaunee, Osage, Paiute. Our ancestors
3 are connected to the human race. That's all we
4 need to know. It's time our ancestors are returned
5 and cradled by Mother Earth, just plain human
6 decency will return peace to our ancestors.

7 But I agree with Mr. Mervin Wright that the
8 term "culturally unidentifiable" is not acceptable,
9 especially after listening to my Elders, uncles,
10 aunts, brothers, and sisters this morning. I am
11 saddened by the lengths that they had to go to in
12 order to show affiliation with sacred objects,
13 cultural patrimony and human remains unearthed from
14 their homelands. They had the cooperation and
15 collaboration with neighboring tribes that numbered
16 14 or more, so how can it be that affiliation is
17 not with one, if not all 14 or more of those
18 tribes? How can anybody – how can anyone be a
19 nobody? We are all relatives. We live on Mother
20 Earth as one. We interact with the animal life,
21 the plant life, the waters, the sky. We cannot
22 survive without each other.

23 The Haudenosaunee do not have a reburial
24 ceremony, but we do the best we can to speak to our
25 ancestors and let them know they can now continue

1 their journey. I do not want to have my grandson
2 or my great-grandchildren to have to deal with the
3 same issue, to still have to fight to get our
4 ancestors off the shelves having to do reburials.
5 This has to stop. I am one small voice in a very
6 big issue, and I hope that my words in some way can
7 provide some understanding of how much the
8 Haudenosaunee takes these matters seriously. I
9 trust that my spiritual and traditional beliefs
10 will help guide me through my duty of protecting
11 and caring for my ancestors.

12 (Native American language.) I appreciate this
13 opportunity to speak to you on behalf of the
14 Haudenosaunee Standing Committee on Burial Rules
15 and Regulations. I look forward to welcoming you
16 to the territory of the Haudenosaunee, particularly
17 the Onondaga Nation territory to host the 2011
18 NAGPRA Review Committee meeting. (Native American
19 language.)

20 DAN MONROE: Thank you.

21 **SHANNON KELLER O' LOUGHLIN**

22 SHANNON KELLER O' LOUGHLIN: Thank you,
23 Christine.

24 I was asked by Anthony Gonyea, who is the
25 NAGPRA representative for the Onondaga Nation, to

1 update you on what has occurred since the Onondaga
2 Nation brought its dispute with the New York State
3 Museum last October in San Diego. He has asked me
4 to read this statement.

5 In September last month, the Onondaga Nation
6 reburied 180 ancestors that had been removed from
7 an area called the Engelbert Site in Nichols, New
8 York, Onondaga Nation aboriginal territory. The
9 ancestors had been disturbed from their resting
10 place in 1967 to make way for an expressway. They
11 were held by the New York State Museum as
12 unaffiliated human remains, unconnected to any
13 relatives. New York State Museum did not consult
14 with Indian nations concerning these ancestors, and
15 instead determined them to be unaffiliated based on
16 age alone.

17 After the Onondaga Nation engaged the museum
18 in consultation and provided documentation
19 concerning affiliation, which included oral
20 history, material culture, geography, linguistics,
21 and expert opinion, the New York State Museum still
22 refused to affiliate these ancestors with the
23 Onondaga Nation or with any other Indian nation.
24 Then the Onondaga asked the Review Committee to
25 hear our dispute. The Review Committee found that

1 the Engelbert ancestors were affiliated with the
2 Onondaga Nation last October 2008.

3 On behalf of the Onondaga Nation, we would
4 like to inform the Review Committee what happened
5 after that finding. New York State Museum refused
6 to come with the Onondaga Nation and meet with
7 nation citizens and consult and discuss the
8 Engelbert Site and how to commence a successful
9 repatriation. They would only talk with me, with
10 Tony Gonyea, and with the nation's attorney. They
11 rejected the terms by which the nation requested to
12 move forward so that a transfer of the collection,
13 at least on paper could occur within 90 days. They
14 delayed the repatriation because they stated they
15 were going to obtain a NAGPRA repatriation grant
16 but never did. They did not provide a draft
17 Federal Register notice for nation review until
18 February 2009, four months after the Review
19 Committee's findings. In addition, the museum
20 would not keep in touch with us concerning the
21 progress of the repatriation and we were forced to
22 use our attorney resources to obtain information
23 from the museum. When the repatriation was finally
24 scheduled and the press asked the director of the
25 New York State Museum his opinion about the

1 repatriation, he stated that the affiliation of the
2 Engelbert ancestors was found by the Review
3 Committee and was not a museum decision. As we
4 know the museum is the party that is required by
5 law to make that determination and did so
6 apparently through its Federal Register notice.

7 Also during the October 2008 Review Committee
8 dispute hearing on this matter, the Review
9 Committee found that the New York State Museum
10 should reevaluate its unaffiliated collections.
11 During a November face-to-face meeting Tony had
12 with the museum, he requested all information about
13 the collections from the Onondaga Nation's
14 aboriginal area, and the museum stated that they
15 would provide that information. On November 24,
16 2008, Tony sent a follow-up letter and requested
17 consultation concerning how the museum was going to
18 move forward on the Review Committee's finding.
19 The museum has not responded to either Tony's oral
20 or written requests. Now that the Engelbert
21 repatriation has concluded, Tony says, I am afraid
22 we will start another journey with New York State
23 Museum regarding the remaining 800 to 900 ancestors
24 still left in boxes without any relatives. It is
25 our duty to take care of those who have gone before

1 us, and it is likely that we will be before you
2 again raising the same issues with the same museum
3 so that we can take care of the responsibilities
4 that the Creator has given us.

5 Now to shift a little bit. The Haudenosaunee
6 Standing Committee has also asked me to come to you
7 today and give you a status on the June 2011 Review
8 Committee meeting that not quite a year ago the
9 Haudenosaunee Standing Committee sent the Review
10 Committee a letter inviting you all to come to the
11 Central Fire of the Haudenosaunee Confederacy. The
12 Central Fire being the Onondaga Nation, and their
13 territory lies just south of Syracuse. Syracuse
14 University is a wonderful private university in
15 Syracuse. They have been very supportive of
16 Haudenosaunee students and of the Indian nation
17 communities that surround Syracuse. And in fact
18 they pay, they give scholarship money for
19 Haudenosaunee students that attend there. So the –
20 it's a very supportive institution, and we're
21 working with Syracuse University for probably the
22 first week in June 2011 for your Review Committee
23 meetings. And luckily because this is a private
24 institution and not hotel conference center, the
25 expenses should be less. There's an affiliated

1 hotel that's right there on campus, the Sheraton.
2 So it looks like you're going to have a wonderful
3 space. And the Haudenosaunee Standing Committee is
4 working towards events and contact with the
5 Haudenosaunee nations and some social activities as
6 well, so the standing committee looks forward to
7 the Review Committee coming to Syracuse in 2011 and
8 we shouldn't have snow by June. Thank you. That's
9 all we have.

10 DAN MONROE: Thank you.

11 Review Committee, comments or questions?

12 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

13 DONNA AUGUSTINE: I just feel your frustration,
14 especially in trying to do the right thing and not
15 getting answers. So I'm really happy that you came
16 and brought that up and brought it to the attention
17 of everyone here. Thank you.

18 SHANNON KELLER O'LOUGHLIN: I'll let Mr. Gonyea
19 know that you said that. Thank you.

20 MERVIN WRIGHT, JR.: I've got a comment.

21 DAN MONROE: Yes.

22 MERVIN WRIGHT, JR.: First I just want to thank
23 you for making an effort to follow up with the
24 recommendation that was issued by the committee.
25 We have a similar situation out in Nevada with the

1 Bureau of Land Management where a decision was made
2 by the Review Committee supporting the tribe's
3 claim for repatriation on a – they're calling it
4 the Spirit Cave remains, and the BLM, you know, had
5 ignored the decision of the Review Committee. And
6 the Fallon Paiute Shoshone Tribe filed a lawsuit
7 against the BLM, and the court ruled in favor of
8 the tribe.

9 And sometimes, you know, we have to assume
10 that responsibility in the court, and unfortunately
11 that's where tribes are having to assert its
12 authority based on its status as a sovereign – as a
13 governing authority of this nation. And – but what
14 I've come to find is that instead of having Federal
15 laws or Federal regulations that acknowledge our
16 status as a society, as a community, as a culture,
17 we tend to have to rely on court decisions to
18 establish that for us, either through the Supreme
19 Court or through appellate court decisions.

20 And it's unfortunate but that's Indian law,
21 you know. I mean, our laws – the laws that are
22 supposed to assist and govern our actions always
23 end up in the courtroom. And those decisions in
24 the courtroom are really what sets the stage for
25 what Indian law ends up – basically what it sets

1 the foundation for our continuation of trying to
2 assert ourselves, our authority. And I just wanted
3 to acknowledge, you know, the situation out in
4 Nevada that the Fallon Paiute-Shoshone Tribe, the
5 steps that they had to take based on the Federal
6 agency's acknowledgement of this committee's
7 decision and the effort of that tribe to repatriate
8 a set of remains that are so important. Thank you.

9 DAN MONROE: Thank you.

10 SHANNON KELLER O'LOUGHLIN: May I make a
11 statement?

12 DAN MONROE: Yes.

13 SHANNON KELLER O'LOUGHLIN: May I respond to
14 that? I appreciate that. As an Indian nations'
15 attorney, the Haudenosaunee have asked me to do a
16 lot of cultural resource work for them, including
17 NAGPRA issues. And what we're finding is that we
18 believe there may be a few museums who are the
19 holdouts, with all due respect, who do not want to
20 comply with NAGPRA where these matters are going to
21 go to court. And I am doing my best as legal
22 counsel to recommend to my clients, and I want to
23 share that with all of you, that in making formal
24 requests for repatriation with museums who do not
25 want to be in compliance that you might want to

1 have — get assistance from the National NAGPRA
2 Program or ask legal counsel to look over your
3 formal requests for repatriation and make sure that
4 you are crossing your Ts and dotting your Is,
5 because these matters could end up in court. You
6 just don't know. And I'm really in fear that these
7 issues will, and they don't do too well in court.

8 DONNA AUGUSTINE: And I just — can I just add
9 something, Mr. Chairman?

10 DAN MONROE: Yes.

11 DONNA AUGUSTINE: Just to know that there's 800
12 to 900 ancestral remains, that's a heavy burden to
13 carry, to be responsible for, and to feel that
14 compassion from the heart and from the spirit. So
15 I remember when it was brought to the Review Board,
16 and we all agreed that this should happen and,
17 well, maybe they have to bring it back here again.
18 Something needs to happen. Somebody needs to move
19 something on this because it just seems very
20 unjust.

21 DAN MONROE: Could — is it possible for us to
22 pull the language that we used in making that
23 finding regarding the New York State Museum,
24 specifically the language pertaining to the
25 recommendation or suggestion, I'm not sure what in

1 fact it said, so we could review that briefly and
2 discuss it?

3 SHANNON KELLER O'LOUGHLIN: I have it on my
4 computer if you would like me to get it. I don't
5 know if anyone would have it quicker than me.

6 DAN MONROE: Yes, that would be --

7 STEPHEN SIMPSON: Probably not, we would need
8 to pull it from the Federal Register. So go ahead.

9 DAN MONROE: You have it here?

10 SHANNON KELLER O'LOUGHLIN: Yes.

11 DAN MONROE: That would be great.

12 SHANNON KELLER O'LOUGHLIN: Do you want this
13 now or --

14 DAN MONROE: Yes, now. Thank you.

15 SHANNON KELLER O'LOUGHLIN: I'll apologize in
16 the beginning just in case there's technical
17 problems. You just never know when you open up the
18 computer what's going to happen.

19 DAN MONROE: Is that a Windows machine?

20 SHERRY HUTT: Is anybody on the Web?

21 DAN MONROE: I've got web access.

22 SHERRY HUTT: It's on our website, the Federal
23 Register notice. It's under Review Committee
24 findings.

25 (Brief time used to locate information.)

1 SHANNON KELLER O'LOUGHLIN: I don't have the
2 notice, but I do have a quote from the notice that
3 we sent to New York State Museum.

4 DAN MONROE: Yes, can you read it?

5 SHANNON KELLER O'LOUGHLIN: Sure. It says,
6 During our conference call with you last Wednesday,
7 the nation learned that the New York State Museum
8 is internally discussing the NAGPRA Review
9 Committee's unanimous October 12th finding and
10 recommendation that, quote, 'The New York State
11 Museum reevaluate its assessments regarding
12 cultural affiliation for Native American human
13 remains in its possession based on a preponderance
14 of all available evidence as laid out in statutory
15 requirements,' end quote. And that's from the
16 draft transcript of October 12, 2008, deliberations
17 page 35. So that was taken directly from your
18 deliberations and not the Federal Register notice.

19 SHERRY HUTT: (Comment inaudible.)

20 DAN MONROE: Did you -

21 DAVID TARLER: We have the Federal Register
22 notice.

23 DAN MONROE: The language says that the Review
24 Committee recommended that the New York State
25 Museum reevaluate the cultural affiliation of all

1 the Native American human remains in its possession
2 or under its control, which on the basis of their
3 age the museum hitherto had determined to be
4 culturally unidentified or unidentifiable and that
5 in doing so the museum used the preponderance of
6 all the available evidence, relevant evidence, as a
7 standard for deciding cultural affiliation or lack
8 thereof.

9 So what I would propose and I'll put this on
10 the table, and then we can discuss it, is that we
11 send a query to the New York State Museum to
12 determine status of their action in terms of this
13 recommendation, which was issued how long ago?

14 STEPHEN SIMPSON: The date is at the top of
15 that notice.

16 DAN MONROE: March -- this was dated March 4,
17 2009. That's when this was filed?

18 Then what I would suggest we do -- that would
19 mean that they've had, what, six months?

20 STEPHEN SIMPSON: Six months since the notice,
21 about a year since the meeting.

22 DAVID TARLER: They've had almost eight months.

23 STEPHEN SIMPSON: Almost eight months, yeah.
24 Almost eight months since the notice.

25 DAN MONROE: Yeah, I'll leave this as it stands

1 for discussion. So we would – the proposal is that
2 we ask them for an update on the progress that
3 they're making and acting on this recommendation.
4 Discussion?

5 ROSITA WORL: I think we should move with it,
6 Mr. Chair.

7 DAN MONROE: Would someone like to make the
8 motion?

9 **REVIEW COMMITTEE MOTION**

10 ERIC HEMENWAY: I'd like to make a motion to
11 accept that we find the recommendation from the New
12 York State Museum.

13 DAN MONROE: Second?

14 SONYA ATALAY: Second.

15 DAN MONROE: It's been moved and seconded that
16 we send a query to the New York State Museum to
17 obtain information on the implementation or action
18 that they've taken with respect to our
19 recommendation in this finding, and we can insert
20 the proper language I assume. Any further
21 discussion?

22 ROSITA WORL: And if they could maybe report to
23 us by our next –

24 DAN MONROE: And report to us by our next
25 meeting. Further discussion?

1 All in favor say aye.

2 SONYA ATALAY: Aye.

3 DONNA AUGUSTINE: Aye.

4 ERIC HEMENWAY: Aye.

5 DAN MONROE: Aye.

6 ROSITA WORL: Aye.

7 MERVIN WRIGHT, JR.: Aye.

8 DAN MONROE: Opposed? Motion carries.

9 Shannon, do you have anything else?

10 SHANNON KELLER O'LOUGHLIN: No, thank you very
11 much.

12 DONNA AUGUSTINE: Thank you.

13 DAN MONROE: Thank you.

14 And with that we will adjourn the meeting for
15 today. We will begin meeting at 8:30 tomorrow. I
16 would remind you that there will be a screening of
17 NAGPRA video segments immediately following this
18 meeting in this room. And I thank all of you for
19 your attendance and participation and remind you
20 that tomorrow we are meeting directly across the
21 street, not in this facility. Thank you all.

22 **MEETING RECESS**

23

24

25